



**House
Legislative
Analysis
Section**

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CERT. STORM WATER OPERATORS

House Bill 4971 as introduced
First Analysis (9-22-93)

Sponsor: Rep. James M. Middaugh
Committee: Conservation, Environment
& Great Lakes

THE APPARENT PROBLEM:

Regulations issued by the U.S. Environmental Protection Agency (EPA) under the National Pollutant Discharge Elimination System (NPDES) require an NPDES permit for all construction activities which disturb five or more acres of land. Most states, including Michigan, currently administer the permit program for the EPA by requiring contractors on such sites to obtain a permit before proceeding with work on the site. In Michigan, the NPDES program is administered by the Department of Natural Resources (DNR). As authorized under the water resources commission act, the DNR currently requires a contractor on a site five acres or more in size to employ someone as a certified storm water operator--who provides oversight to stormwater control facilities at the site--in order to obtain the required NPDES permit. This person may be an employee of the company who serves in some other professional capacity but has been chosen to participate in a DNR-sponsored program on behalf of the company to obtain the necessary training and certification as a storm water operator. (This program has been developed but not yet implemented by the DNR.) Some people, however, believe this part of the state-run NPDES program not only imposes an unnecessary burden on contractors but goes beyond what EPA guidelines require and, thus, have requested legislation that would exempt them from the requirement that they employ a certified storm water operator at such construction sites.

THE CONTENT OF THE BILL:

Under the water resources commission act, operators in charge of facilities that discharge liquid waste must be approved and certified by the Department of Natural Resources. This requirement does not apply to facilities that discharge liquid wastes into public sanitary sewers; to materials that are injected into a well to facilitate production of oil or gas; nor to water obtained

during oil or gas production and disposed of in a well that has been used either to facilitate production or for disposal purposes. House Bill 4971 would add storm water runoff, snow melt runoff, surface water runoff, and drainage from a construction activity to this list of exemptions.

MCL 323.6a

FISCAL IMPLICATIONS:

The Department of Natural Resources says the bill could have fiscal implications for the state, depending on any changes that would have to be made to the stormwater discharge program as may be required by the U.S. EPA. (9-21-93)

ARGUMENTS:

For:

The bill would eliminate from the water resources commission act the requirement for a certified storm water operator to be used to oversee storm water discharge facilities at construction sites involving five or more acres of land. The DNR currently operates the NPDES permit program (patterned after the federal program administered by the EPA) and, as provided in the water resources commission act, requires such sites to have a certified storm water operator. The DNR has developed a program that will provide training, testing and certification of these individuals, and companies will have to send one of their employees to the program for certification. (The certification program has not yet been implemented but, according to a DNR spokesman, soon will be.) This requirement, however, not only will impose burdensome costs on the construction industry but also will burden the department with responsibility to oversee the training program. Once certified, an employee of a developer will act as inspector over the company's work sites to ensure pollution from

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storm water runoff is minimized via various soil erosion management techniques learned in the DNR certification program. The task of inspecting construction sites, however, is properly a function of the state itself. The DNR, however, has liberally interpreted EPA guidelines as requiring a certified storm water operator at construction sites when, in fact, they merely call for "qualified personnel" to be provided by the discharger to inspect construction sites without defining these terms; the EPA essentially has left this up to the discharger. And because other provisions in the water resources commission act already provide protections against soil erosion and other water pollution problems at construction sites (logs must be kept, soil erosion control measures taken, and on-site control facilities maintained in good operating condition), exempting developers from the onerous requirement to have a certified storm water operator at larger construction sites will not necessarily lead to water pollution problems in these areas.

Against:

The state NPDES permit program recently implemented was designed not only to meet federal requirements for oversight at larger construction sites but also to ease the administrative burden on the DNR and those required to obtain permits. As Michigan continues to struggle with a budget deficit, federal requirements such as these by the EPA regarding NPDES permits become difficult to implement. After lengthy study of the issue by the legislature, via the Joint Committee on Administrative Rules (JCAR), it was generally agreed upon by state officials and those within the business community to adopt a system whereby developers would have someone trained and certified by the DNR to operate stormwater control facilities at their respective construction sites. This certification program ensures that stormwater control measures at these sites are supervised by someone who understands the need for and operation of such measures, and who is qualified to ensure the system is working properly throughout the construction process. Eliminating this program (self-funded, of course, from permit fees) will undermine what has been a successful attempt involving the state and the business community to implement EPA requirements for stormwater discharge facilities; moreover, it may require the state to take other actions to ensure compliance with EPA requirements, which could entail even greater costs for both the state and private developers. More importantly, dissolving the

program now could result in harmful storm water discharges at or near construction sites, which would reduce water quality in those areas.

POSITIONS:

The Michigan Association of Home Builders supports the bill. (9-21-93)

The National Federation of Independent Business, Michigan chapter, supports the bill. (9-21-93)

The Department of Natural Resources opposes the bill. (9-21-93)

The Michigan United Conservation Clubs opposes the bill. (9-21-93)