

# Legislative Analysis

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## MANDATE REPORTS OF RELEASES OF POLLUTING MATERIALS

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**House Bill 5586 (Substitute H-6)**  
**Sponsor: Rep. Daniel Acciavatti**

**Senate Bill 977 (Substitute H-4)**  
**Sponsor: Sen. Jud Gilbert, II**

**House Committee: Great Lakes and Tourism**  
**Senate Committee: Natural Resources and Environmental Affairs**  
**First Analysis (5-4-04)**

***BRIEF SUMMARY:*** The bills would add reporting requirements for the release of a pollutant into the waters of the state so as to include notification of local health departments and public safety answering points (PSAPs), and would add related civil penalties.

***FISCAL IMPACT:*** House Bill 5586 would not have a fiscal impact on the state or on local governmental units. Senate Bill 997 would have an indeterminate fiscal impact on the state and local governmental units. Incarceration expenses and fine revenues realized and collected from adjudicated violations of these provisions would be absorbed and collected by local governments and the State. The actual impact would depend on the frequency and severity of these violations.

### ***THE APPARENT PROBLEM:***

The Department of Environmental Quality (DEQ) regulates the discharge of water and wastewater to the ground and groundwater of the state under Part 31 of the Natural Resources and Environmental Protection Act. Part 5 rules promulgated pursuant to Part 31 address release prevention planning, secondary containment, surveillance, and release reporting requirements. Rule 7 requires the owner, operator, or manager of an oil storage facility or an on-land facility that releases or permits the release of any polluting material in excess of a threshold reporting quantity during any 24-hour period to notify the DEQ “as soon as practicable” after the release is detected. The rule also requires the owner or operators to file, within 10 days after the release, a written report with the DEQ that details the cause and discovery of the release and any response measures taken to prevent a similar release.

On February 1, 2004, approximately 42,000 gallons of toxic chemicals leaked into the St. Clair River from an oil plant in an area of Sarnia, Ontario, known as Chemical Valley. Although the chemicals used to make lubrication oils were of “very low toxicity”, the release required the water-intake systems south of Port Huron serving Marysville, St. Clair, East China Township, Marine City, Algonac, and Ira Township to be closed, prompting those systems to rely on reserves and affecting tens of thousands of residents.

In 2003, there were 13 similar chemical spills into the river, and since the mid-1980's there have been at least 800 spills into the river. [In response to the recent spills in Chemical Valley, the Ontario government established the Industrial Pollution Action Team to determine what can be done to prevent further spills in the St. Clair region.] While steps for notification have, at times, proven effective in preventing serious public health situations, considerable risk to area residents remains. It is believed that the notification requirements, while generally effective, can be enhanced to provide area residents with better notice of spills and of the appropriate responses to spills.

### ***THE CONTENT OF THE BILLS:***

#### ***House Bill 5586 (MCL 324.3101 and 324.3111b)***

The bill would amend Part 31 (Water Resources Protection) of the Natural Resources and Environmental Protection Act (NREPA) relating to the release of polluting materials in the waters of the state. The bill is tie-barred to Senate Bill 977.

#### **Notification and Reporting Requirements**

The bill would require a person who is required to report a release of a polluting material under Part 5 of the Water Resources Protection Rules (R. 324.2001 to 324.2009) to also call 9-1-1 and report the release to the public safety answering point (PSAP) - i.e. 9-1-1 dispatch center - covering the areas where the release occurred. If that person is also required under Part 5 rules to submit a written report to the Department of Environmental Quality, the person would also have to submit a copy of that report to the local health department where the release occurred.

If the state police or another state agency receives notification in accordance with the laws or an agreement with another state, Canada, or Ontario, of a release in that other jurisdiction and if the material enters or could enter the groundwater or surface water of the state, the state police or other state agency would have to notify the PSAP in the affected counties.

The bill would also require the emergency management coordinator of each county to develop a plan, in conjunction with the directors of the principal PSAPs in the county, to provide timely notice of a release required to be reported to local, state, and federal agencies.

[The definition of "threshold reporting quantity" used in the bill is from R. 324.2002 of the Michigan Administrative Code. That rule defines the term to mean any of the following:

- For releases of oil to the surface of the ground, 50 pounds.
- For releases of oil to the waters of the state, any quantity that causes unnatural turbidity, color, visible sheens, oil films, foams, solids, or deposits in the receiving waterbody.
- For release of salt to the surface of the ground or waters of the state, 50 pounds in solid form, unless the use is authorized by the DEQ for de-icing purposes, or 50 gallons in

liquid form, unless authorized by the DEQ as a dust suppressant or de-icing agent of permitted under Part 31 of NREPA.

- For releases of all other polluting materials, the quantity specified in Table 1 in R. 324.2009, or any quantity that causes unnatural turbidity, color, visible sheens, oil films, foams, solids, or deposits in the receiving waterbody.]

### **Departmental Requirements**

The a person reports a release to the DEQ, the DEQ would have to notify that person of his or her requirement to call 9-1-1 and report the release and to submit a report to the local health department. The DEQ would also have to request that the person report the release to the PSAP covering the area where the release occurred or, if unknown, where the release was discovered.

The DEQ would also be required to post on its web site the requirement to call the appropriate PSAP and submit a report to local health departments, contact information for the DEQ and the National Response Center, and any applicable criminal and civil penalties for the failure to report the release to the appropriate PSAP or to submit a report to the local health department. If the DEQ fails to provide such notice on its web site, it would not relieve a person of any of the requirements to report the release.

Finally, the DEQ would be required to biennially evaluate state and local reporting systems and report its finding and any recommendations to the appropriate legislative standing committees.

### ***Senate Bill 977 (MCL 324.3115)***

The bill would amend Part 31 of the NREPA to add penalties related to the requirements under House Bill 5586. Specifically, the penalty for the failure to report a release to the DEQ or the appropriate PSAP would be a civil fine not exceeding \$2,500 and the failure to report a release to the local health department would be a civil fine not exceeding \$500. The bill is tie-barred to House Bill 5586.

### ***ARGUMENTS:***

#### ***For:***

The added requirements under House Bill 5586 provide for an immediate notification of a release of toxic chemicals into the waters of the state. This allows local law enforcement officials and other first responders to quickly respond to the spill, and provides area residents with an early warning system when a spill occurs. Moreover, the requirement that local health departments receive a report regarding a spill provides them with necessary information so as to better protect the health and welfare of area residents.

#### ***Against:***

Opponents of the bill note that the added reporting requirement can be a real administrative burden for many manufacturers. While the requirement added by the bill

is not, in itself, terribly burdensome, the aggregate of similar requirements can be quite burdensome and costly to businesses in the state.

***POSITIONS:***

The Department of Environmental Quality supports the bill. (4-29-04)

The Michigan Townships Association supports the bill. (4-29-04)

The Michigan Municipal League supports the bill. (4-29-04)

The Michigan Association of Counties supports the bill. (4-29-04)

The St. Clair County Emergency Management Agency supports the bill. (4-29-04)

The Associated Petroleum Industries of Michigan is neutral on the bill. (4-29-04)

Consumer's Energy is neutral on the bill. (4-29-04)

The Michigan Manufacturer's Association opposes the bill. (4-29-04)

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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.