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BILL ANALYSIS



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Senate Bill 510 (Substitute S-2)
Sponsor: Senator Burton Leland
Committee: Appropriations

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CONTENT

The bill would amend the Natural Resources and Environmental Protection Act to increase the fees paid by dischargers of stormwater. The bill would create different fees for municipal separate storm sewer systems based on the population served.

In 1987, the United States Congress enacted amendments to the Clean Water Act that implemented significant changes in the Storm Water Program within the National Pollutant Discharge Elimination System (NPDES). This System requires permits for various types of pollution discharge and the United States Environmental Protection Agency (EPA) certifies states to administer the permits. Storm water dischargers include industrial facilities, construction sites, and municipal separate storm sewer systems (MS4s). Most states are certified by the EPA for administration of the permits. Michigan, and all of the other members of EPA Region 5, are so certified.

The first phase of the two-part program went into effect in November 1993. Phase I of the program required permits for industrial facilities, construction sites disturbing five acres or more, and MS4s serving populations greater than 100,000. Under Phase I, approximately 3,300 storm waste discharge general permits are in effect for industrial facilities and MS4s. Individual permits have been issued for another 230 discharge facilities. In addition, 850 construction sites were subject to Permit by Rule and were required to file a Notice of Coverage and submit an application fee.

Phase II went into effect on March 10, 2003, and added construction sites between one and five acres and municipalities with population greater than 50,000 that are in an urbanized area (defined by the United States Census Bureau as having a population density greater than 1,000 per square mile) to the facilities required to obtain a storm water discharge permit. The Department of Environmental Quality estimates that 550 MS4s, 14,000 construction sites, and selected municipal facilities in Michigan that were previously exempted will need to obtain permits under Phase II regulations. The implementation of the Federal regulations requires a number of actions at the state level. Administrative rule changes were promulgated by the Department and went into effect in May 2003. The rule changes, contained in ORR 2001-008 EQ, are required of all states by the EPA. It is the changes to the program under Phase II that the bill addresses.

Fee Proposal

Currently, storm water discharge fees are scheduled to sunset on October 1, 2003. Construction sites pay a one-time fee of \$125. The annual fee for all other dischargers, including industrial facilities and MS4s, is \$200. Storm water discharge permits are valid for five years.

Under the bill, the fees for storm water discharge permits would be increased for all types of facilities. The bill would set the one-time permit fee for construction sites at \$400, an increase of \$275 from the current fee of \$125. The fee would be paid only by construction sites that disturb five acres or more. Construction sites between one and five acres would be covered by a Permit by Rule and would not be required to file a Notice of Coverage or an application fee. They would have to comply with the storm water discharge regulations.

Industrial and commercial sites would pay an annual permit fee of \$260, an increase of \$60 from the current fee of \$200. Selected municipal facilities, such as power plants, airports, and bus or truck garages, would be subject to the fee for industrial facilities. The permit fee for municipalities would be based on the population served by the storm system. If the population served by an MS4 were different from the latest decennial census, the permittee could appeal the annual fee determination and submit written verification of the actual population served by the system. County storm sewers would be assessed a permit fee of \$3,000 and other MS4 institutions, such as a university or school district, would pay a permit fee of \$500. The table below shows the proposed fees for each size of municipality.

Proposed Fees for Municipal Separate Storm Sewer Systems	
Population Range	Proposed Annual Fee
0 - 1,000	\$500
1,001 - 3,000	1,000
3,001 - 10,000	2,000
10,001 - 30,000	3,000
30,001 - 50,000	4,000
50,001 - 75,000	5,000
75,001 - 100,000	6,000
Greater than 100,000	7,000
MS4 institutions	500
Counties	3,000

All fees would be nonrefundable. In the case of a late payment, the Department would be authorized to take enforcement action, including the suspension or revocation of a permit. If a permit were revoked, a person would not be allowed to apply for a new permit before three years from the effective date of the revocation. At the time of reapplication, the person would be required to pay a fee of \$500 in addition to the annual fee assessment. Appeals of a fee or penalty could be filed with the circuit court in accordance with Section 631 of the Revised Judicature Act within 30 days of receipt of the annual fee determination.

The bill would maintain the same payment schedule that currently exists. A fee is assessed for individuals possessing a permit in January 1 of each year. The Department must provide notification of the fee by February 1 and payment must be postmarked by March 15 or 45 days after receipt of notification, whichever is later. A late payment penalty of 0.75% of the total due is imposed for each month or portion of a month the payment is past due.

The bill would create a sunset of October 1, 2007, for the stormwater discharge fee and would require the Department to submit to the Legislature, by January 1, an annual workload analysis report on the stormwater discharge program.

The bill would add definitions for a number of terms, particularly:

- "Certificate of coverage": a document issued by the Department that authorizes a discharge under a general permit.
- "Municipal separate storm sewer system (or MS4)": all separate storm sewer systems owned by a public body having jurisdiction over disposal of sewage, industrial waste, storm water, or other wastes, including special districts created under state law.
- "Notice of Coverage": a notice that a person engaging in construction activity agrees to comply with a permit-by-rule for that activity.
- "Public body": the United States, the State of Michigan, a city, village, township, county, school district, public college or university, single purpose governmental district, or any other body created by Federal or State statute or law.
- "Separate storm sewer system": a system of drainage, including, but not limited to, roads, catch basins, curbs, gutters, parking lots, ditches, conduits, pumping devices, or manmade channels, which are not a combined sewer where storm water mixes with sanitary waste or the system is not part of a publicly owned treatment works.

Storm Water Fund

The Storm Water Fund currently exists in statute. The Fund receives all storm water discharge permit fee revenue and interest earnings collected under Section 3118. Money in the Fund does not lapse to the General Fund at the end of a fiscal year. Authorized uses of the Fund are storm water related activities. To the list of allowable uses, the bill would add regional and statewide public education to enhance the effectiveness of storm water permits.

MCL 324.3118 & 324.3119

FISCAL IMPACT

Phase II of the Federal storm water program and the implementation of the rules will significantly increase the number of permit applications reviewed by the Department and subsequent enforcement activities. The Governor's recommended budget for FY 2003-04 includes an additional \$1,162,500 and 5.0 FTEs for storm water activities to fulfill the Department of Environmental Quality's obligations under the new Federal rules. In FY 2002-03, 14.5 FTEs and \$1,364,000 from storm water permit fees are appropriated for the storm water discharge program. The Governor's recommendation would increase this appropriation to \$2,526,500 and 19.5 FTEs for the program. Both the House-passed and Senate Appropriations Committee versions of the FY 2003-04 budgets for the DEQ include the Governor's recommendation for FTE and fee increases.

The permitting requirements were established by the EPA. If this fee proposal is not adopted, the State will continue to administer the program and collect fees according to the current fee structure. With the additional workload from the recent implementation of Phase II, permit processing delays and less monitoring would be likely. If the fee collections are not sufficient to run the program in the manner required by the EPA, then the EPA will be required to establish an storm water discharge permit program in Michigan. All other states in EPA Region 5 operate their own storm water permit program and the EPA does not currently have the resources and staff to operate such a permit program. According to the Department, it would take the EPA Region 5 approximately one year to organize an administrative office for this purpose. Since this program is one component of the State's NPDES authority, failure of the State to administer one part of the program would result in removal of the entire authority and the EPA Region 5 would take over the responsibilities.

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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.