

Honorable Michigan State Senator Tom Casperson, Chariman
Michigan Senate Natural Resources, Environment, and Great Lakes Committee

Honorable Michigan State Senator Phil Pavlov
Honorable Michigan State Senator Mike Green
Honorable Michigan State Senator Mike Kowall
Honorable Michigan State Senator Arlan Meekhof
Honorable Michigan State Senator Rebekah Warren
Honorable Michigan State Senator Morris Hood



Elmwood

*The Charter Township
of Elmwood*

Leelanau County

10090 E. Lincoln Rd.

Traverse City, MI 49684

Office (231) 946-0921

Fax (231) 946-9320

September 30, 2014

Dear Senators Casperson, Pavlov, Green, Kowall, Meekhof, Warren, and Hood:

The purpose of this letter is to express my strong opposition, as Grand Traverse County BPW Chairman to HB 4874, sheepishly disguised as the "Choice Bill" by its sponsors. I, Charter Township of East Bay Supervisor Glen Lile, and Charter Township of Garfield Supervisor Chuck Korn testified in opposition to HB 4874 before the House Committee on May 13, 2014.

Simply put, HB 4874 is bad public policy. It seeks to change significant portions of Sections 11708 and 11715 of 1994 PA 451, the Michigan Natural Resources and Environmental Protection Act, for the primary benefit of members of the Michigan Septic Tank Association (MSTA) who to date have successfully lobbied many elected state representatives to support same, **ostensibly under the guise it is pro-business, which it is not.**

Throughout the State of Michigan, Township Boards, City Commissions, Village Councils, Sewer and Water Authorities, and Waste Water Treatment Plant officials do their level best to operate their facilities and jurisdictions like a business. At the local level, we build and maintain facilities in the public interest, and we also establish and execute budgets based upon projected revenues and expenditures. Like most businesses, in order to stand a chance of being successful, we must be able to operate under as much certainty as possible. Furthermore, the rules of the game under which we operate on a daily basis need to be clear, fair, and consistently applied. Otherwise, the interests of our constituents, whom we are sworn to protect to the very best of our collective abilities, face unnecessary economic jeopardy. In HB 4874, an attempt is being made to alter the rules under which major economic decisions were based many years ago.

Please ask yourselves this very important question. If HB 4874 is such a great idea, why is it opposed by the Michigan Townships Association (MTA), the Michigan Association of Counties (MAC), and the Michigan Municipal League (MML)?

HB 4874 seeks to change longstanding provisions of the Michigan's Natural Resources and Environmental Protection Act to the detriment of many, and to the potential benefit of a few. For example, Exhibit A (consisting of 5 pages), depicts existing Sections 11708 and 11715, which HB 4874 would amend as currently proposed, followed by a copy of House Bill No. 4874 As-Passed by the House on June 10, 2014. Note that the marked-up copies of Section 11708 and Section 11715 (the first two pages) are identical to the copy of House Bill No. 4874 As-Passed by the House on June 10, 2014.

Exhibit B, consisting of 4 pages, includes copies of the Legislative Analysis of House Bill 4874 dated Complete to 3-14-14 and Complete to 6-2-14. Each Legislative Analysis was compiled by the House Fiscal Agency. Please also note that both conclude, under the heading of **FISCAL IMPACT**, that "House Bill 4874 would have minimal significant impact on the Department of Environmental Quality. The fiscal impact to local units of government is indeterminate." Indeterminate? Based upon what facts, or lack thereof? Whose responsibility is it to make such a determination? Is it the sponsors of HB 4874's responsibility to provide clear and concise factual information so that Michigan Representatives and Senators can make sound policy decisions? Or is the responsibility of the disparate multitude of facilities throughout the state of Michigan which accept septage and holding tank waste, and which depend upon the revenues generated by such waste to balance their budgets, most of whom were likely totally unaware that such legislation was being proposed until the past couple of months?

Whom do our state Representatives and Senators truly represent? Special interests, like MSTA, or the untold thousands of people in the trenches who toil tirelessly to do what's best for their local constituents?

Before turning to Exhibit C, allow me to comment further on Exhibit B. Under the heading of **BACKGROUND AND DISCUSSION** in the Legislative Analysis Complete to 6-2-14, the following statements appear: "Several officials from local governments in and around Grand Traverse County testified in opposition to the bill, saying that it would negatively affect their ability to pay off a recently opened sewage treatment facility which was built with more capacity than needed due to incorrect estimates during the planning process. To pay for the excess capacity, the rate for taking septage to the facility is almost three times the state average, according to some estimates. The

officials worry that by eliminating the service areas, and thus allowing servicers to use other treatment facilities, they may have to pay for the facility out of their local respective municipality's local general funds."

While the above underlined statements are essentially accurate, they fail to tell the "rest of the story." Such as the fact that the Grand Traverse County sewage (septage) treatment facility was built in the first place because local haulers were concerned about ever-decreasing opportunities for land application. But don't take my word for it. Instead, please see Exhibit C, which highlights but a few of the letters that ultimately served as the justification for Grand Traverse County and five urban townships (Acme Township, the Charter Township of East Bay, the Charter Township of Elmwood, the Charter Township of Garfield, and Peninsula Township) which stuck their necks out and pledged their "full faith and credit" to construct and operate a \$7.8 million septage treatment facility for the good of the greater community. And please don't allow anyone to suggest the Grand Traverse County Septage Treatment Facility (STF) was intentionally overbuilt, or that it's the only example of a facility or program built or predicated upon projections which eventually turned out to be inaccurate.

Yes, admittedly the existing facility has more capacity than is currently needed, because it was built on faulty volume estimates (many of which were provided by local haulers), and a few faulty assumptions (such as average septic tank pumping frequency). But that's not the point. The STF was built at the behest of septage haulers; it was funded by jurisdictions which exercised local control on a collective basis for the perceived good of their constituents and with the aim of protecting the environment; and currently the STF is able to meet all of its financial obligations **only because** construction bonds were redeemed and reissued at considerable expense to Grand Traverse County and the five urban townships, and septage processing rates were increased by 50% from twelve to eighteen cents per gallon because establishing a special assessment district on all septic and holding tank owners met with stiff and appropriate local opposition from potentially-affected property owners. Nonetheless, ever since raising the septage processing rates almost two years ago, not one single property owner has appeared before the Grand Traverse County Board of Public Works (BPW) to complain about same.

Exhibit D, consisting of 4 pages, includes copies of a August 20, 2014 Traverse City Record Eagle article written by Michelle Merlin entitled "Bill could undermine septage treatment facility"; a September 7, 2014 Traverse City Record Eagle Forum piece written by myself entitled "Financial viability of septage treatment facility threatened yet again::" and Grand Traverse County Resolution 120-2014 entitled "Resolution Opposing House Bill No. 4874" which was adopted unanimously by Grand Traverse County Commissioners on

September 24, 2014. In comparison, is anyone aware of any Michigan newspaper articles, or any Township, County, Village, or City Resolutions, expressing support or economic justification for HB 4874?

Lastly, Exhibit E, consisting of 2 pages, is a memo written by Grand Traverse County BPW Attorney Scott Howard that was entered into the record before the House Natural Resources Committee on May 13, 2014.

In conclusion, proposed HB 4874 (the so-called "Choice" bill) is bad public policy. It seeks to gut key provisions of Section 11708 and Section 11715 of 1994 PA 451, the Michigan Natural Resources and Environmental Protection Act, to benefit certain septage haulers throughout the state, and presumably some of their customers. It threatens the continued financial viability of a host of jurisdictions statewide which operate and maintain facilities built or modified to treat septage and holding tank waste for the Pure Michigan environment that so many of us cherish and have proudly vowed to protect. HB 4874 is opposed by MTA, MAC, and MML. It is also opposed by Grand Traverse County Commissioners and the five urban townships which are members of the Grand Traverse County Board of Public Works which constructed a \$7.8 million septage treatment facility back in 2004 at the behest of local septage haulers.

It should not be incumbent upon the "indeterminate" group of potentially-affected jurisdictions statewide to determine the likely financial impact of HB 4874; rather, it should be incumbent upon HB 4874's sponsors to do so. Furthermore, if I can find the time to alert jurisdictions throughout the state about HB 4874, as I've been doing the past couple of months, a similar effort could and should have been mounted by those elected to represent these same jurisdictions statewide that HB 4874 was under serious consideration, and that comments and concerns were thus being solicited.

For the reasons articulated above, on behalf of jurisdictions statewide that would be negatively adversely impacted, including the tens of thousands of taxpayers whose interests would be placed in serious economic jeopardy, I hereby respectfully assert that HB 4874 is not deserving of Senate support, and request that Senate adoption consideration of HB 4874 be abandoned.

Very Sincerely Yours,



Jack Kelly, Charter Township of Elmwood Supervisor and also
Chairman, Grand Traverse County Board of Public Works (BPW)

Exhibit A: Existing Sections 11708 and 11715 of the Michigan Natural Resources and Protection Act that would be amended by HB 4874

Exhibit B: Legislative Analysis of HB 4874 Complete to 3-14-14 and Complete to 6-2-14 prepared by the House Fiscal Agency

Exhibit C: Sample Letters of Support from Local Grand Traverse County Septage Haulers and the Grand Traverse Bay Watershed Initiative dating back to the mid/late 1990s Recommending Construction of a Septage (Sewage) and Holding Tank Treatment System (Facility)

Exhibit D: Traverse City Record Eagle article dated August 20, 2014; Traverse City Record Eagle Forum piece dated September 4, 2014; and Grand Traverse County Resolution 120-2014 adopted September 24, 2014

Exhibit E: Grand Traverse County BPW Attorney Scott Howard Memo dated May 12, 2014

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT (EXCERPT)
Act 451 of 1994

324.11708 Deposit of septage waste in public septage waste treatment facility; disposal fee; prohibiting operation of wastewater treatment plant.

Sec. 11708.

~~(1) Before 1 year after the effective date of the 2004 amendatory act that added this subsection, if a person is engaged in servicing in a receiving facility service area not more than 15 road miles from that receiving facility, that person shall dispose of the septage waste at that receiving facility or another receiving facility in whose service area the person is engaged in servicing.~~

~~(2) Subsection (1) does not apply to a person engaged in servicing who owns a storage facility with a capacity of 50,000 gallons or more.~~

~~(3) Beginning 1 year after the effective date of the 2004 amendatory act that added this subsection, if a person is engaged in servicing in a receiving facility service area, that person shall dispose of the septage waste at that receiving facility or any other receiving facility within whose service area the person is engaged in servicing.~~ *SUBSECTION 1 DOES NOT APPLY TO*

~~(4) If a person engaged in servicing owns a storage facility with a capacity of 50,000 gallons or more and the storage facility was constructed, or authorized by the department to be constructed, before the location where the person is engaged in servicing was included in a receiving facility service area under an operating plan approved under section 11715b, subsection (3) does not apply to that person before the 2025 state fiscal year.~~ *WHO*

~~(5) A receiving facility may charge a fee for receiving septage waste. Before 1 year after the effective date of the 2004 amendatory act that added this subsection, the fee shall not exceed the actual costs related to the treatment and storage of the waste. Beginning 1 year after the effective date of the 2004 amendatory act that added this subsection, the fee shall not exceed the actual costs of operating the receiving facility including the reasonable cost of doing business as defined by common accounting practices.~~

~~(6) The department may issue an order prohibiting the operation of a wastewater treatment plant or structure as a receiving facility due to excessive hydraulic or organic loading, odor problems, or other environmental or public health concerns.~~ *BECAUSE OF*

~~(7) A person shall not dispose of septage waste at a wastewater treatment plant or structure if the operation of that wastewater treatment plant or structure as a receiving facility is prohibited by an order issued under subsection (6) or section 11715b.~~

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004.

Popular name: Act 451

Popular name: NREPA

SUBJECT TO SUBSECTION (2)

IF

EXHIBIT A, PAGE 1

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT (EXCERPT)
Act 451 of 1994

324.11715 Preemption; duty of governmental unit to make available public septage waste receiving facility; posting of surety.

Sec. 11715. (1) This part does not preempt an ordinance of a governmental unit that prohibits the application of septage waste to land within that governmental unit ~~or otherwise imposes stricter requirements than this part.~~

(2) If a governmental unit requires that all septage waste collected in that governmental unit be disposed of in a receiving facility or prohibits, or effectively prohibits, the application of septage waste to land within that governmental unit, the governmental unit shall make available a receiving facility that meets all of the following requirements:

(a) The receiving facility service area includes the entire governmental unit.

(b) The receiving facility can lawfully accept and has the capacity to accept all septage waste generated within that governmental unit that is not lawfully applied to land.

(c) If the receiving facility is not owned by that governmental unit, the receiving facility is required by contract to accept all septage waste generated within that governmental unit that is not lawfully applied to land.

(3) The owner or operator of a receiving facility may require the posting of a surety, including cash in an escrow account or a performance bond, not exceeding \$25,000.00 to dispose of septage waste in the receiving facility.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004;—Am. 2012, Act 41, Imd. Eff. Mar. 6, 2012.

Popular name: Act 451

Popular name: NREPA

EXHIBIT A, PAGE 2

HB-4874, As Passed House, June 10, 2014

HOUSE BILL No. 4874

June 20, 2013, Introduced by Reps. Goike, Pettalia, Lauwers, Rendon, McBroom, Kurtz, Daley, Kivela, Bumstead, Kelly, Victory, Foster, Franz, Johnson, Shirkey, MacMaster, Dianda and Potvin and referred to the Committee on Natural Resources.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 11708 and 11715 (MCL 324.11708 and 324.11715), section 11708 as amended by 2004 PA 381 and section 11715 as amended by 2012 PA 41.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 11708. ~~(1) Before 1 year after the effective date of the 2004 amendatory act that added this subsection, if a person is engaged in servicing in a receiving facility service area not more than 15 road miles from that receiving facility, that person shall dispose of the septage waste at that receiving facility or another receiving facility in whose service area the person is engaged in servicing.~~

~~(2) Subsection (1) does not apply to a person engaged in servicing who owns a storage facility with a capacity of 50,000 gallons or more.~~

EXHIBIT A, PAGE 3

~~(1) (3) Beginning 1 year after the effective date of the 2004~~
~~amendatory act that added this subsection, SUBJECT TO SUBSECTION~~
 (2), if a person is engaged in servicing in a receiving facility
 service area, that person shall dispose of the septage waste at
 that receiving facility or any other receiving facility within
 whose service area the person is engaged in servicing.

(2) ~~(4) IF SUBSECTION (1) DOES NOT APPLY TO~~ a person engaged
 in servicing WHO owns a storage facility with a capacity of 50,000
 gallons or more and ~~IF~~ the storage facility was constructed, or
 authorized by the department to be constructed, before the location
 where the person is engaged in servicing was included in a
 receiving facility service area under an operating plan approved
 under section 11715b. ~~, subsection (3) does not apply to that~~
~~person before the 2025 state fiscal year.~~

(3) ~~(5) A receiving facility may charge a fee for receiving~~
 septage waste. ~~Before 1 year after the effective date of the 2004~~
~~amendatory act that added this subsection, the fee shall not exceed~~
~~the actual costs related to the treatment and storage of the waste.~~
~~Beginning 1 year after the effective date of the 2004 amendatory~~
~~act that added this subsection, the THE fee shall not exceed the~~
 actual costs of operating the receiving facility including the
 reasonable cost of doing business as defined by common accounting
 practices.

(4) ~~(6) The department may issue an order prohibiting the~~
 operation of a wastewater treatment plant or structure as a
 receiving facility ~~due to BECAUSE OF~~ excessive hydraulic or organic
 loading, odor problems, or other environmental or public health
 concerns.

(5) ~~(7) A person shall not dispose of septage waste at a~~
 wastewater treatment plant or structure if the operation of that
 wastewater treatment plant or structure as a receiving facility is

prohibited by an order issued under subsection ~~(6)~~ (4) or section 11715b.

Sec. 11715. (1) This part does not preempt an ordinance of a governmental unit that prohibits the application of septage waste to land within that governmental unit. ~~or otherwise imposes stricter requirements than this part.~~

(2) If a governmental unit requires that all septage waste collected in that governmental unit be disposed of in a receiving facility or prohibits, or effectively prohibits, the application of septage waste to land within that governmental unit, the governmental unit shall make available a receiving facility that meets all of the following requirements:

(a) The receiving facility service area includes the entire governmental unit.

(b) The receiving facility can lawfully accept and has the capacity to accept all septage waste generated within that governmental unit that is not lawfully applied to land.

(c) If the receiving facility is not owned by that governmental unit, the receiving facility is required by contract to accept all septage waste generated within that governmental unit that is not lawfully applied to land.

(3) The owner or operator of a receiving facility may require House Bill No. 4874 as amended June 4, 2014

the posting of a surety, including cash in an escrow account or a performance bond, not exceeding \$25,000.00 to dispose of septage waste in the receiving facility.

[Enacting section 1. This amendatory act takes effect upon the expiration of 90 days after the date it is enacted into law.]

EXHIBIT A, PAGE 5

Legislative Analysis



Mary Ann Cleary, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

SEPTAGE WASTE SERVICING

House Bill 4874

Sponsor: Rep. Ken Goike

Committee: Natural Resources

Complete to 3-14-14

EXHIBIT B,
PAGE 1

A SUMMARY OF HOUSE BILL 4874 AS INTRODUCED 6-20-13

Part 117 of the Natural Resources and Environmental Protection Act deals with septage waste servicers. "Service" or "servicing" means cleaning, removing, transporting, or disposing, by application to land or otherwise, of septage waste (for example, from septic tanks). The bill would amend septage waste servicing provisions in two ways.

(1) Exception for Servicers with Storage Facilities—Eliminate Sunset

Currently, a person who is engaged in servicing in a receiving facility service area must dispose of the septage waste at that receiving facility or another receiving facility within the service area that the person is engaged in servicing.

There is an exception to this requirement for a person engaged in servicing that owns a storage facility with a capacity of 50,000 gallons or more, if that facility was constructed, or authorized by the Department of Environmental Quality to be constructed, before the location where the person is engaged in servicing was included in a receiving facility service area under an approved operating plan. This exception applies only until the 2025 state fiscal year. House Bill 4874 would remove the 2025 date. This means servicers with storage tanks would be exempt indefinitely from the requirement they must take septage waste to a receiving facility within the service area.

A "receiving facility service area" or "service area" means, generally, the territory for which a receiving facility has the capacity and is available to receive and treat septage waste. The geographic service area of a receiving facility cannot extend more than 25 radial miles from the receiving facility.

A "receiving facility" in the act is a structure that is designed to receive septage waste for treatment at a wastewater treatment plant or at a certain research, development, and demonstration projects to which the structure is directly connected, and that is available for that purpose as provided for in an ordinance of the local unit of government where the structure is located or in an operating plan.

(2) Eliminate Local Ordinances that Impose Stricter Requirements

Part 117 also says that it does not preempt an ordinance of a governmental unit that prohibits the application of septage waste to land within that governmental unit "*or otherwise imposes stricter requirements than this part.*" House Bill 4874 would strike the highlighted language. [This would, for example, prevent a local unit of government

from requiring that septage waste be taken to a specific receiving facility if another facility was available.]

FISCAL IMPACT:

House Bill 4874 would have minimal significant fiscal impact on the Department of Environmental Quality. The fiscal impact to local units of government is indeterminate.

EXHIBIT B, PAGE 2

Legislative Analyst: Chris Couch
Fiscal Analyst: Viola Bay Wild

■ 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.

Legislative Analysis



SEPTAGE WASTE SERVICING

Mary Ann Cleary, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4874 (reported without amendment)

Sponsor: Rep. Ken Goike

Committee: Natural Resources

Complete to 6-2-14

A SUMMARY OF HOUSE BILL 4874 AS REPORTED BY COMMITTEE 5-13-14

The bill would amend Part 117 of the Natural Resources and Environmental Protection Act (NREPA) by repealing several provisions relating to the removal and transport of septage waste.

Part 117 of the Natural Resources and Environmental Protection Act deals with septage waste servicers. "Service" or "servicing" means cleaning, removing, transporting, or disposing, by application to land or otherwise, of septage waste (for example, from septic tanks). The bill would amend septage waste servicing provisions in two ways.

(1) Exception for Servicers with Storage Facilities—Eliminate Sunset

Currently, a person who is engaged in servicing in a *receiving facility service area* must dispose of the septage waste at that receiving facility or another receiving facility within the service area that the person is engaged in servicing.

There is an exception to this requirement for a person engaged in servicing that owns a storage facility with a capacity of 50,000 gallons or more, if that facility was constructed, or authorized by the Department of Environmental Quality to be constructed, before the location where the person is engaged in servicing was included in a receiving facility service area under an approved operating plan. This exception applies only until the 2025 state fiscal year. House Bill 4874 would remove the 2025 date. This means servicers with storage tanks would be exempt indefinitely from the requirement they must take septage waste to a receiving facility within the service area.

A "receiving facility service area" or "service area" means, generally, the territory for which a receiving facility has the capacity and is available to receive and treat septage waste. The geographic service area of a receiving facility cannot extend more than 25 radial miles from the receiving facility.

A "receiving facility" in the act is a structure that is designed to receive septage waste for treatment at a wastewater treatment plant or at a certain research, development, and demonstration projects to which the structure is directly connected, and that is available for that purpose as provided for in an ordinance of the local unit of government where the structure is located or in an operating plan.

EXHIBIT B, PAGE 3

(2) Eliminate Local Ordinances that Impose Stricter Requirements

Part 117 also says that it does not preempt an ordinance of a governmental unit that prohibits the application of septage waste to land within that governmental unit "or otherwise imposes stricter requirements than this part." House Bill 4874 would strike the highlighted language. [This would, for example, prevent a local unit of government from requiring that septage waste be taken to a specific receiving facility if another facility was available.]

BACKGROUND AND DISCUSSION:

The bill sponsor stated during testimony that the intent of the bill is to allow residents with septic tanks to seek more competitive pricing by repealing the service areas requirement in current law for treating septage waste. Several officials from local governments in and around Grand Traverse County testified in opposition to the bill, saying that it would negatively affect their ability to pay off a recently opened sewage treatment facility which was built with more capacity than needed due to incorrect estimates during the planning process. To pay for the excess capacity, the rate for taking septage to the facility is almost three times the state average, according to some estimates. The officials worry that by eliminating the service areas, and thus allowing servicers to use other treatment facilities, they may have to pay for the facility out of their respective municipality's local general funds.

POSITIONS:

Support: Michigan Septic Tank Association

Oppose: Michigan Townships Association and Michigan Association of Counties

FISCAL IMPACT:

House Bill 4874 would have minimal significant fiscal impact on the Department of Environmental Quality. The fiscal impact to local units of government is indeterminate.

EXHIBIT B, PAGE 4

Legislative Analyst: Chris Couch
Josh Roesner

Fiscal Analyst: Viola Bay Wild

■ 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.

6-10-94

Mac McClelland

We are in desperate need of a
sewage treatment plant and the sooner
the better.

With all the land being developed we have
run out of places to dump our septic.

Please stress how important this
facility is to everyone with a septic tank. We
need help to get rid of septic.

Mageline Clark
Larry Clark

LARRY CLARK'S PUMPER SERVICE
6776 BARNEY ROAD
TRAVERSE CITY, MICH
947-5939

EXHIBIT C, PAGE 1

JUN 13 1994

WALT STEUER PUMPING SERVICE
3122 Hartman Rd.
Traverse City, MI 49684
616-946-2462

June 10, 1994

Grand Traverse County
Traverse City, MI 49684

To whom it may concern:

This is a letter of request for an update on what Grand Traverse County is doing about septic tank & holding tank disposal.

In 1989 I proposed a Pre-Treatment Plant which didn't get anywhere only an expensive education for Walt Steuer.

The same problems are present in 1994 as 1989 and previous years. Since 1989, Federal law 40 CFR Part 503 has become effective as of July 20, 1993. Problem is the State of Michigan doesn't know what they are going to do about policing 503. They have no money or the manpower, they plan on turning it over to the Feds to handle.

My plan was to take care of my pumping business septage with a 10,000 gallon a day drain field. I wanted to acquire 36 acres south of Traverse City but 4 of the adjoining neighbors within the 800 foot boundary opposing my useage. That plan was shot down the tubes.

I am presently looking at De-water equipment by Simon Moor of Denmark. They have a de-watering unit truck-mounted or on a skid that has 96% solids removed with an effluent clear enough for disposal into city sewer.

I can arrange a demonstration of Simon Moon Equipment through a dealer in Ohio.

Again, what has Grand Traverse County done? In the past I heard that they had looked at new treatment raising snails. Since that report, no news in the paper or reports to anyone.

I would like some sort of answer to myself and the public on what they can expect.

Thank you,

Walt Steuer

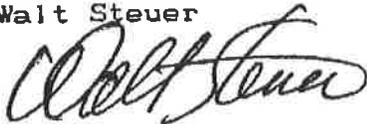


EXHIBIT C, PAGE 2

JUN 16 1984

MAC MCCLELLAN
P.O. BOX 592
TRAVERSE CITY, MI 49685-0592

DEAR MAC MCCLELLAN,

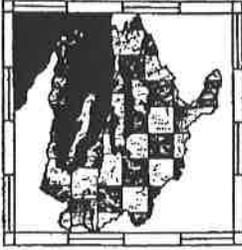
I'M WRITING THIS LETTER AS REQUESTED BY YOU CONCERNING THE DIFFICULTIES WE AS SEPTIC PUMPERERS ARE HAVING SECURING DUMP SITES. SOME OF THESE PROBLEMS ARE:

- ISOLATION DISTANCES FROM HOMES
- FINDING A SUITABLE DUMP SITE WITHIN A REASONABLE DISTANCE FROM TRAVERSE CITY
- PEOPLE VIOLATING NO TRESPASSING SIGNS
- PUBLIC NOT EDUCATED ON LEGAL DUMPING
- TEMPORARY ODOR TO HOMEOWNERS IN THE AREA
- COST TO SEPTIC PUMPERERS TO CARE FOR DUMP SITES
- PROBLEMS IN WINTER ACCESSING DUMP SITES
- COMPLAINTS TO THE HEALTH DEPARTMENT

IF I CAN BE OF ANY HELP IN THE FUTURE ON ANY OTHER ISSUES CONCERNING DUMP SITES YOU CAN CALL ME AT 946-5845.

SINCERELY,
Kathy Walters
KATHY WALTERS
BELANGER'S SEPTIC SERVICE
2668 FOUR MILE RD.
TRAVERSE CITY, MI 49684

EXHIBIT C, PAGE 3



KEEP IT CLEAN!

GRAND TRAVERSE BAY WATERSHED INITIATIVE

1102 Cass Street, Suite B • Traverse City, Michigan 49684
Phone: 616-935-1514 • Fax: 616-922-4633 • E-mail: gtrwt@traverse.com

Printed on Recycled Paper

SEP 02 1997

September 02, 1997

Mac McClelland
Grand Traverse County
400 Boardman Avenue
Traverse City, MI 49684-2577

Dear Mac:

On behalf of our Board of Directors we are pleased to convey support from the Grand Traverse Bay Watershed Initiative office for the county's development of a septage and holding tank treatment system currently being proposed by the Grand Traverse County Board of Public Works.

Over 70 percent of the county's households use on-site wastewater disposal systems, generating over 4 million gallons per year which is currently disposed on land. This volume of marginally treated sewage being land applied throughout the county may represent a significant source of nonpoint source pollution if not properly managed.

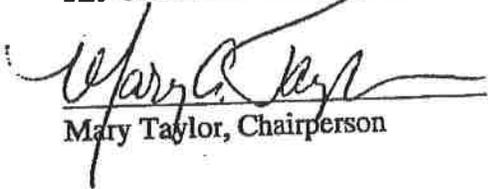
The development of a facility which will actively treat septage and holding tank waste to tertiary standards with the residue as compostable material will be a major step in minimizing this serious source of potential contamination.

We strongly encourage local governmental units, citizens, and businesses to join in partnership to develop the septage and holding tank system.

Thank you for the opportunity to support this important endeavor.

Sincerely

The Grand Traverse Bay Watershed Initiative


Mary Taylor, Chairperson


Christopher Wright, Executive Director

EXHIBIT C, PAGE 4

004

Bill could undermine septage treatment facility

By MICHELLE MERLIN mmerlin@record-eagle.com | Posted: Wednesday, August 20, 2014 5:36 pm

TRAVERSE CITY — A bill headed to the Michigan Senate could undercut the financial stability of Grand Traverse County's multi-million dollar septage treatment facility.

The bill would allow township residents to send their septage to outside disposal facilities contrary to township ordinances that require they send it to the county plant. The legislation would also allow companies that don't treat septage to continue indefinitely by eliminating a sunset provision.

Officials worry, if the bill passes, they would need to find another way to pay for the \$7.8 million plant.

"If they're going to change the law, they need to grandfather in what's already there because the townships went on the hook to build this for the haulers. The haulers are the ones who came to the county because they were running out of places to land apply," said East Bay Township Supervisor Glen Lile. "It's just a bad, bad situation if the law goes through."

Rep. Wayne Schmidt, R-Traverse City, initially proposed an amendment to the bill that would exempt Grand Traverse County from some of the changes. The amendment failed and Schmidt voted in favor of the bill.

"We still wanted to make sure it was affordable for all those people that have septic tanks, that's why I voted for it, and also to move it over to the Senate to begin work there," Schmidt said. "They can hopefully find a solution that balances all three of those concerns."

Schmidt's three primary concerns with the bill are protecting the environment, keeping septage disposal affordable and making sure the townships can pay for the facility, he said.

Schmidt voted to have the county sell the bonds to fund the plant when he was a Grand Traverse County commissioner.



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The Grand Traverse County Septage Treatment Plant.

EXHIBIT D, PAGE 1

"We again get into a situation where we're either figuring out new ways to have users pay for the facility or we're looking to the guaranteeing townships to put forth general fund tax dollars to pay for facility, neither of which were popular options previously," said Scott Howard, the attorney for the county's Board of Public Works which oversees the plant.

The facility is guaranteed by East Bay, Elmwood, Acme, Garfield and Peninsula townships.

The plant operated in the red for years until, in 2013, officials raised fees by 50 percent. Now users pay 18 cents per gallon of septic tank waste they dump.

The facility generated revenue in 2011 and again in 2013 and is on track to do so again, said Dean Bott, the county finance director.

State Sen. Howard Walker, R-Traverse City, said he'd like to know more about the bill but would be reluctant to support it.

"I think it's a good idea to provide alternatives for treatment of septage, but as I understand, this bill would kind of override some processes that might be in place at the local levels and put in jeopardy some bonding or indebtedness that local facilities have incurred based on the current rules," Walker said. "We're changing the rules of the game after people committed indebtedness and resources based on their knowledge of what the rules are."

The bill passed the full Michigan house in June with a 61-49 vote. No Republicans voted against the bill. It was referred to the Senate's Natural Resources, Environment and Great Lakes committee.

"Unfortunately, it's a fly-below-the-radar, special interest bill," Walker said. "I see it very much as who should make the rules of the game, the local governments and municipalities we all live in or the folks in private business hauling waste?"

Three township supervisors went to Lansing in May to testify in opposition to the bill before a House committee.

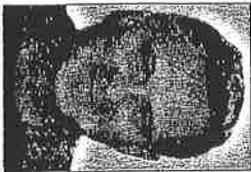
The President of the Michigan Septic Association testified in favor of the bill, which was introduced by Rep. Ken Goike, R-Ray Township, who owns a trucking and excavating business and is a member of the Septic Association.

EXHIBIT D, PAGE 2

Financial viability of septage treatment facility threatened yet again

BY JACK KELLY

During my first four years as Elmwood Township Supervisor, 20 percent of my time was spent seeking ways for the financially-challenged Grand Traverse County Septage Treatment Facility to pay for itself.



Jack Kelly

After a wall collapsed shortly after the plant went operational, it thereafter became apparent that methodology used to develop annual waste flows was flawed. The state-of-the-art plant couldn't meet its financial obligations, and for several years Grand Traverse County fronted bond interest and principal payments at no cost to the five guaranteeing townships (Acme, East Bay, Elmwood, Garfield, and Peninsula) which had pledged their good faith and credit to build the plant for the good of the environment and for

septage haulers concerned about ever-decreasing opportunities to land-apply waste.

From 2008-2012, county Board of Public Works officials tried to minimize costs by: ensuring haulers were bringing waste to the Grand Traverse facility and not someplace else and funding operating costs and bond payments so short-term subsidies from the county would no longer be needed. The aim was also to protect the general fund balances of the five guaranteeing townships:

Years of investigating the feasibility of a special assessment ended abruptly when 600 people appeared at a 2012 public hearing to voice their dissent. But now, the plant is meeting its financial obligations after redeeming its large construction bond and increasing septage processing rates from 12 cents to 18 cents a

gallon.

Today, a septic or holding tank customer pays only when their system is pumped; someday, I fully expect processing rates will be reduced significantly after the bonds are paid off.

Enter proposed legislation, HB 4874. It's already passed the Michigan House and will soon go to the Senate. Sheepishly referred to as the Choice Act by sponsor Rep. Ken Goike and the bill's supporters, the Michigan Septic Tank Association, it seeks to gut key provisions of the Michigan Natural Resources and Environmental Protection Act and eliminate local ordinances imposing stricter requirements (such as prohibiting application of septage waste onto land).

HB 4874 would also eliminate the existing sunset clause prohibiting storage facilities with a capacity of 50,000 gallons or more to operate beyond 2025.

If signed into law, the potential financial implications to the county septage

plant's financial solvency, and by extension the continued economic vitality of the guaranteeing townships, cannot be understated. Wastewater treatment plants and sewer authorities throughout Michigan that accept septage and holding tank waste would likewise be impacted negatively.

HB 4874, presumably aimed to "limit local protectionist septic waste facility restrictions," is bad public policy. It's opposed by the Michigan Association of Counties and the Michigan Townships Association. Concerned citizens must contact state representatives before it's too late to oppose this clandestine legislation that would benefit Michigan Septic Tank Association members while jeopardizing both the Pure Michigan environment we all proclaim to cherish and the financial well being of jurisdictions that constructed facilities to process waste in an effort to "do the right thing."

RESOLUTION

120-2014



RESOLUTION OPPOSING HOUSE BILL NO. 4874

WHEREAS, House Bill #4874 would amend Part 117 of the Natural Resources and Environmental Protection Act (NREPA) by repealing several provisions relating to the removal and transport of the septage waste; and

WHEREAS, Septage waste "servicing" includes cleaning, removing, transporting, or disposing, by application to land or otherwise, of septage waste, for example from septic tanks; and

WHEREAS, This bill would amend septage waste servicing provisions in two ways, and

WHEREAS, Currently, a person engaged in servicing in a receiving facility service area must dispose of the septage waste at that receiving facility or in the area they are engaged in servicing, and

WHEREAS, There is an exception for those owning a storage facility with a capacity of 50,000 gallons or more until 2025, and the Bill removes that date allowing servicers with storage tanks to be exempt indefinitely from the requirement to take septage waste to a receiving facility within the service area; and

WHEREAS, Further, Part 117 says that it does not preempt an ordinance of a governmental unit that prohibits the application of septage waste to land within that governmental unit "*or otherwise imposes stricter requirements than this part.*", and

WHEREAS, House Bill 4874 would strike the highlighted language, which could prevent a unit of government from requiring that septage waste be taken to a specific receiving facility if another facility was available, and

THEREFORE BE IT RESOLVED that the Grand Traverse County Board of Commissioners, concurs with the Michigan Township Association and the Michigan Association of Counties, and hereby opposes House Bill No. 4874.

BE IT FURTHER RESOLVED that copies of this resolution be forwarded to Senator Howard Walker, Representative Wayne Schmidt, Representative Ken Goike and the Michigan Association of Counties.

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MEMORANDUM

TO: Board of Public Works; Chairman Kelly and Director Slater
FILE NO. 5720.01
FROM: Scott W. Howard
DATE: May 12, 2014
RE: House Bill 4874

You have requested my opinion on the legal impact of House Bill 4874, which would amend Part 117 of the Natural Resources and Environmental Protection Act. As you will likely recall, Part 117 is the section of the law that regulates septage hauling and disposal. HB 4874 makes two key changes to Part 117, summarized as follows:

1. **Elimination of Storage Facility Sunset.** Currently Part 117 requires a hauler to dispose of septage at a receiving facility if the septage is pumped within the 25 mile radius of the receiving facility. There is an exception to that rule, which exempts a hauler from this requirement if they constructed a "storage facility" prior to the construction of the treatment plant. That exemption sunsets in 2025; however, HB 4874 eliminates that sunset provision and would allow the exemption to continue beyond 2025. The practical impact of this change would be to allow for land application, even where a receiving facility is available to treat the waste, for an indefinite time in the future.
2. **Elimination of "Stricter Requirements" Language.** The Gmoser litigation turned in part on the language in Part 117 that says "[t]his part does not preempt an ordinance of a governmental unit that prohibits the application of septage waste to land within that governmental unit or otherwise imposes stricter requirements than this part." In particular, the courts looked to the "stricter requirements" language in upholding the Uniform Septage Control Ordinance enacted by the Grand Traverse County municipalities. HB 4874 strikes the last part of the sentence, eliminating "or otherwise imposes stricter requirements than this part." This is an effort to overturn the Gmoser litigation through legislation. The practical implication of this change would be to prohibit ordinances like the Uniform Septage Control Ordinance which directs septage to a particular treatment facility. That could, in turn, result in a decrease in septage volume delivered to the Grand Traverse Septage Treatment Facility.

Therefore, it is my opinion that HB 4874 has the potential to adversely impact the way the BPW operates the Septage Treatment Facility. The following are some bullet points on why the proposed legislation is inconsistent with the past efforts of the BPW:

- The amendments to the statute would undue the costs expended to defend the Uniform Septage Control Ordinance in the Gmoser case and would also potentially result in a decrease in volume delivered to the STF.
- The purpose of Part 117 is to ensure the proper treatment of septage and to protect human health and the environment. In doing so, it establishes what is a baseline of standards, but expressly allows local units of government to enact local regulations to further protect human health and the environment. The statute is not designed to protect certain commercial practices and historical land application of septage.
- Part 117 contains an express requirement that a municipality banning land application ensure that there is a treatment facility available to receive septage for that community. It would be entirely inconsistent with this requirement if a municipality must provide a treatment

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facility, but is not allowed to ensure that septage generated in the community be processed at that facility.

- Municipalities building treatment facilities need to have some assurance of a revenue source. Preventing municipalities from directing septage generated within their boundaries to their own facility. Without certainty of flow, it is difficult to predict volume or financing for the design of a new facility.
- Prohibiting local communities from imposing their own requirements is inherently anti-local control without any good reason in this instance. There is no compelling reason to prohibit a local government from insisting on higher standards for human health and the environment.
- The DEQ has limited staff and resources devoted to the Part 117 program. Local municipalities are much more in tune with the needs of the community and are better able to enforce their own local requirements.
- There is no valid public health purpose for continuing land application beyond 2025 if there is a receiving facility that is able to treat the waste. The "storage facility" exemption should not be extended any further in time.

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