

CONFIDENTIAL LEGISLATIVE BILL REVIEW FORM: 2016

Bill Number: H.674 Name of Bill: An act relating to public notice of wastewater discharges

Agency of Natural Resources / Dept: DEC Author of Bill Review: Ernie Kelley, Manager, Wastewater Management Program

Date of Bill Review: 2/2/2016 Related Bills and Key Players: DEC, Dept. of Health

Status of Bill (check one): Upon Introduction As passed by 1st body As passed by both

Recommended Position: Support w/modifications identified in #8 below

Analysis of Bill

1. Summary of bill and issue it addresses. *Describe what the bill is intended to accomplish and why.*

The bill establishes reporting and public notification requirements for two types of incidents: 1) all releases of less than fully treated sewage directly to waters of the State; the reporting responsibility is placed on the owners of wastewater treatment facilities except where the release is not from a municipal or industrial wastewater treatment system, in which case the reporting responsibility lies with DEC, and 2) issuance of a daily press release by the Department of Health advising of cyanobacteria (blue-green algae) outbreaks in Vermont waters.

2. Is there a need for this bill? *Please explain why or why not.* This bill is needed in order to clarify and codify public notice and reporting requirements, and to provide notice to the public of potential health hazards due to sewage discharges and cyanobacteria outbreaks. With the recent creation by the Department of an on-line public notice reporting system by which wastewater treatment facilities can directly and quickly notify the public of releases of untreated sewage, including combined sewer overflow (CSO) events, statutory change is needed to clearly put this noticing responsibility on wastewater treatment facilities. The bill provides tight timeframes for public noticing in order to protect the public health from these releases. This will eliminate unintended delays in issuing public notice.

3. What are likely to be the fiscal and programmatic implications of this bill for this Department?

Section (c) of 10 V.S.A. § 1285 requires the Secretary of ANR to post notices of sewage spills that are not self-reported by a municipal or industrial owner, within four hours of detection (unless detected between the hours of 9:00 p.m. and 5:00 a.m.). In order to meet this requirement between approximately 4:30 p.m. on a Friday and 8:00 a.m. the following Monday, the Department will need to establish a call-in system of some type that will allow incidents to be reported to program staff during those non-working hours. This may also entail the need to assign program staff to a rotating "on call" status for weekend availability in order to assure that incidents can be duly reported and subsequently posted to the web. Under the VSEA contract, such an assignment may require additional compensation to staff. A real benefit to the Department is the fact municipalities will now directly have responsibility under the bill to, within short prescribed time periods, report the release of untreated or partially treated sewage on the Department's public notice webpage. This will allow the public to be quickly notified of these releases and will eliminate the Department as the "middleman" who must take a call from a municipality, and then must post it. During non-business hours, or when staff are tied up with projects, this "middleman" function can result in delays in public noticing of these potential health hazards.

4. What might be the fiscal and programmatic implications of this bill for other departments in state government, and what is likely to be their perspective on it? The Dept. of Health may have workload concerns

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relating to its new requirements under the bill. The Dept. of Health has informed the Department that it will be preparing its own blue sheet for this bill.

5. What might be the fiscal and programmatic implications of this bill for others, and what is likely to be their perspective on it? (for example, public, municipalities, organizations, business, regulated entities, etc)

Municipalities: DEC anticipates that municipalities and industrial dischargers will not oppose the intent of this bill. There may be some opposition to the timeframes in which releases must be posted to the web or notification provided to program staff, and a desire to see a relaxation of what they might consider to be expectations that are too restrictive. There is likely to be less impact in this regard on larger municipalities than on small system operators. A number of small communities employ contract operators for their wastewater treatment facilities and the requirements of this bill may result in the need for some to renegotiate the pertinent contracts to address the bill's requirements.

6. Other Stakeholders:

6.1 Who else is likely to support the proposal and why? The general public will likely support this bill as it enhances notices to the public about potential health hazards that may be derived from contact recreation in impacted waters. The public and environmental groups have been very concerned about timely noticing of CSO events and posting delays that have occurred over weekends.

6.2 Who else is likely to oppose the proposal and why? DEC does not expect major opposition to this bill, other than potential pushback from smaller municipalities on the tight noticing timeframes as well as requirements for estimating the total volume released, since it can be hard to quantify.

7. Rationale for recommendation: *Justify recommendation stated above.* Aside from the minor changes recommended in Section 8 below, DEC fully supports enhanced public notification of health hazards related to sewage discharges and cyanobacteria outbreaks.

8. Specific modifications that would be needed to recommend support of this bill: *Not meant to rewrite bill, but rather, an opportunity to identify simple modifications that would change recommended position.*

DEC recommends striking the definition of "pollution abatement facility" in 10 V.S.A. § 1285(a)(5), which is limited to *municipal* sewage treatment plants, since it is DEC's position that all permitted operators of wastewater treatment facilities, whether municipal or industrial, should have to report. To address this issue, DEC recommends making a slight amendment to 10 V.S.A. § 1285(a)(10), the definition of "wastewater treatment facility," to clarify that definition as follows: "Wastewater treatment facility" means a ~~pollution abatement facility, including the treatment plant, collection system, and pump stations, and attendant facilities,~~ permitted by the Secretary for the purpose of treating sewage.

In 10 V.S.A. § 1285(b)(1)(C), DEC recommends amending the proposed language to read "...discharge of sewage that has not been fully treated to waters of the State; and". This would eliminate the implied need to post events related to minor exceedences of effluent limits established in NPDES discharge permits that pose no threat to human health and safety (for example Total Suspended Solids).

Next, DEC has identified a drafting error in 10 V.S.A. § 1285(d)(2)(A). The lead-in language for that section does not make sense when read with the three subsequent subdivisions. Additionally, the issue identified in 10 V.S.A. § 1285(b)(1)(C) is repeated in this section. To remedy these issues, DEC proposes the following edit:

(2)(A) A municipality shall post temporary signs at public access areas downstream of ~~overflows from sanitary sewers and combined-sewer systems during:~~

- (i) overflows from sanitary sewers and combined sewer systems during dry weather flows;
- (ii) upsets or bypasses within wastewater treatment facilities during dry or wet weather conditions, which are due to factors unrelated to a wet weather storm event and that result in a discharge of sewage that has not been fully treated to water of the State; and
- (iii) discharges of domestic, commercial, or industrial wastewater to separate storm sewer systems.

In 18 V.S.A. § 1222, DEC suggests setting a date specific timeframe, as opposed to the open ended "daily," during which the Dept. of Health must issue daily press releases on cyanobacteria outbreaks. In colder months, cyanobacteria is not able to propagate and the likelihood of contact recreation in waters that could result in an exposure is minimal. Requiring a daily press release in the period spanning mid-winter is not necessary.

9. Will this bill create a new board or commission AND/OR add or remove appointees to an existing one? If so, which one and how many? No.

Commissioner has reviewed this document:  Date: 2/24/16
Secretary has reviewed this document:  Date: 2-5-16