

Municipal liability for sewage discharge into state waters

FACTS:

The Michigan Department of Environmental Quality (DEQ) conducted surveys of water quality in an area along Lake Huron and several of its tributaries. The collected water samples and sensory observations of privately owned septic systems along the shoreline demonstrated that the surface waters were contaminated with both fecal coliform and E. coli bacteria. The samples, taken over a period of time, also indicated that the conditions were becoming progressively worse. All of the properties were located within the borders of Worth Township.

There is no municipal “sewerage system” located within Worth Township. It was undisputed that the surface waters were contaminated by raw sewage of human origin and that the contamination came from septic systems on privately owned properties located within the township. Most of the properties were initially developed as summer cottages that have been converted, over time, to year-round residences. The majority of the septic systems are old, the drain fields are oversaturated, and the raw sewage is directed into ditches and streams leading into Lake Huron. It was also undisputed that the township did not directly discharge the sewage into the waters.

The DEQ filed an action against the township on the basis that the township was in violation of the Natural Resources and Environmental Protection Act (NREPA), a state statute. MCL 324.3109(2) provides that a person shall not directly or indirectly discharge into the waters of the state a substance that is injurious to the public health, safety, or welfare. A municipality is included within the definition of a “person” for purposes of the statute.

The statute further provides that the discharge of any raw sewage of human origin, directly or indirectly, shall be considered prima facie evidence of a violation by the municipality in which the discharge originated (with several exceptions.) The DEQ filed an action against Worth Township requesting that the court hold the township responsible under NREPA for the raw sewage discharged into Lake Huron by private citizens. The township argued that it cannot be held responsible when it had not discharged the raw sewage either directly or indirectly.

QUESTION 1:

Can a municipality such as a township be held responsible under NREPA for raw sewage discharged into state waters by private citizens within the township’s borders?

Answer (according to the trial court):

Yes. The trial court directed Worth Township to take necessary corrective measures in a given time frame to prevent the discharge of raw sewage and to pay fines and attorney fees.

Answer (according to the Michigan Court of Appeals):

No. The court of appeals majority held that under the statute, a municipality cannot be required to prevent the discharge of raw sewage into state waters when the municipality itself has not discharged the raw sewage and the municipality has not otherwise accepted responsibility. A dissent was filed.

Answer (according to the Michigan Supreme Court):

Yes. The Michigan Supreme Court held that the court of appeals misinterpreted the plain language of the statute and reversed the decision of the court of appeals. The Supreme Court examined the statute in question, and held that a municipality can, in fact, be held responsible under NREPA for the raw sewage discharged into state waters by private citizens within the municipality’s boundaries.

The statute, according to the Supreme Court and the court of appeals’ dissent, creates a presumption that NREPA was violated and responsibility for the violation is assigned to the municipality where the violation took place, regardless of who caused the discharge.

Dept of Environmental Quality v Worth Township, No. 141810 (May 17, 2012)

This column highlights a recent judicial decision or Michigan Municipal League Legal Defense Fund case that impacts municipalities. The information in this column should not be considered a legal opinion or to constitute legal advice.

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