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## **Community Wastewater Systems**

The issue of privately developed community wastewater systems has been a hot topic, particularly among Townships. Such systems, while privately constructed and operated, must be considered public because they serve more than one household.

### **Background**

Prior to 2004, the MDEQ required local approval before they would issue a permit. However, in the Lake Isabella Development vs. Village of Lake Isabella case, the Court of Appeals ruled that MDEQ could no longer require local approval by administrative rule.

Unfortunately, the Court did not rule on the issue of Township liability under the Michigan Natural Resource and Environmental Protection Act (NREPA). Subsection 2 of NREPA can hold a municipality responsible for illicit discharge into any bodies of water within the State.

In response to the Lake Isabella case, the Legislature passed and the Governor signed three bills which attempted to address the potential gaps in regulatory authority and assignment of liability. From the perspective of local government, S.B. 356 has the greatest significance. It affirms the ability of local government to regulate community wastewater systems through “local zoning and other ordinances.”

### **Issues to be Addressed**

Community wastewater systems present many challenges to local government. A fundamental question is the level of involvement during the review and approval stages. Some communities have taken a “hands off” position. Others, perhaps recognizing an ultimate responsibility to residents, have decided to be involved in the regulation of such systems.

Perhaps more difficult is the question of the impact on a community’s Master Plan and growth management policies. Some have argued that community wastewater systems allow for development to occur at a greater intensity than if individual on-site systems are used. This particular point seems undeniable. On the other hand, there are proponents who claim that community wastewater systems are environmentally superior and can be regulated and managed in a manner that individual systems cannot.

The key for every community is to review your Master Plan. With the new technology available, site constraints such as poor soils may no longer be a limiting factor in attaining the maximum density anticipated by the Master Plan and zoning designation for a given area. If certain density designations are

based solely on poor soil condition and the capability for individual septic systems, you may be subject to challenge.

## **Regulatory Approaches**

I am recommending to our client communities to consider amending their Zoning Ordinance and adopt a new general ordinance to address community wastewater systems. The proposed ordinance revisions are described below:

### *Zoning Ordinance Amendment*

The Zoning Ordinance amendment would regulate community wastewater systems as a special or conditional land use. Both State enabling laws and local zoning ordinances allow for the consideration of compatibility of a special land use to the Master Plan and surrounding land use patterns.

In addition to applying general standards, we also recommend including more specific zoning standards dealing with buffering and setbacks and separation distance between systems, from a wetland, and from wellheads.

### *General Ordinance*

We also recommend general ordinance which would also require approval of community wastewater systems by the City Council or Township Board. As a general ordinance, this ordinance deals with a broader spectrum of issues regarding the design, construction, operation, maintenance, repair and/or replacement of the system. It is intended to give the community the assurances that the system is properly designed, properly operated and maintained. The Ordinance also ensures that these systems are adequately funded through user charges and there is a mechanism in place for repairs and/or replacement. Finally, the ordinance contains language which would indemnify the community for all costs and liability associated with the system.

One thing that a city or Township can do that other regulatory agencies cannot (i.e., County Health and MDEQ) is require a special assessment to be established by the developer prior to issuance of permits. The benefit of this is it would provide assurance, that should a system fail and the homeowners association does not respond, the community has the ability to assess the cost of repairs against homeowners.