

VIA EMAIL

Sybil Kolon



Director Dan Wyant  
Department of Environmental Quality  
Lansing, Michigan

December 7, 2014

Subject: Comments on Senate Bill 891 from a Citizen (who happens to be a DEQ employee)

Director Wyant,

I am writing to you as a lifetime citizen of the State of Michigan, not as an employee of the DEQ, Remediation and Redevelopment Division (RRD). But I am both, and it is not entirely possible to separate one from the other. The opinions and feelings I express in this letter are my own, but I wouldn't know anything about Senate Bill 891 if I didn't work for RRD.

I have been impressed by your leadership, your ability to work with legislators and the entities RRD regulates and still hold the environment in high esteem. You have improved the image of the DEQ.

You may recall that earlier this year, when you visited the DEQ's Jackson District Office, I questioned you about SB891 that staff had recently learned about. As you know, SB891 would significantly amend Part 201 of the NREPA of 1994, the statute RRD administers. I had been told that RRD put together 16 pages of concerns about the bill that were bad or needed to be changed, but only a few pages survived management review. What I recall you saying was that we could not get everything, so we had to focus on the most important issues. I accepted that, and I was pretty sure I knew what was most objectionable, so I felt OK about that. And I hoped the bill would go nowhere.

On Friday, December 5, RRD staff were informed that the DEQ supports the bill and expects it to pass next week. The most recent version of the bill appears to have some minor tweaks, but it still contains the proposed changes that I find most objectionable.

Now that SB891 is on the verge of being enacted into law, I have to speak up, as a citizen of the State of Michigan. I will focus on only three things that I am most concerned about and familiar with. I think the way this bill has evolved is an example of how special interests are turning the natural resources of the State of Michigan into their dumping ground and padding their bank accounts.

My top three concerns with this bill are itemized below. They are all connected, and in combination will compromise the environmental quality of the State of Michigan's natural resources. The relevant citations from SB891 are attached.

1. New definitions of "residential" and "nonresidential" that designate many recreational areas and all natural areas and wetlands as nonresidential. These areas are clean now. The result of these changes would be that these areas would be subject to less stringent cleanup

standards. Public and private entities should not be coerced into accepting degradation of these areas in the event of a release of hazardous substances. There is likely to be future residential development in areas where this would be applied, and the onus for limiting exposures above residential standards would be placed on non-labile property owners and developers.

2. A new definition of "source" and other changes that limit or negate the need to remove contamination that can continue to be a threat to public health, safety, welfare and the environment for years, before the full extent of the release has been identified. This would have the effect, for new releases where only the letter of the law is being observed, of grossly contaminated soil and groundwater being left in place and continuing to spread. Removal of these "sources", as we now call them, would not be required or even considered. The long term costs of remediation are likely to increase, as well as the impacts to public health, safety, welfare and the environment, if these "sources" are left to disperse.
3. A new provision that would allow liable parties to assign responsibility for ongoing cleanup operations to non-labile parties who happen to own the property where the operations are taking place. This would result in liable parties being able to impose future operation and maintenance costs (that are necessary to ensure the restrictions will be protective) on future owners, who will change over time. It is expected that no original owner would agree to such a thing without compensation, but there is little ability for the DEQ to monitor the actions of third parties in assuming the obligations of liable parties. It is very unlikely that these property owners will understand the ramifications of agreeing to assume such responsibility and it is likely that future exposures would occur.

There are so many other problems with this bill - it should be vetoed if it gets past the House and Senate.

I absolutely understand why we can leave some contamination behind when it is isolated, exposures are controlled, and can be monitored. Our industrial legacy leaves us little choice. However, that does not mean we should treat unspoiled Michigan the same way as legacy sites of environmental contamination. What started happening with the 1995 amendments to the former "polluter pay" statute was a land-use based approach to remediate legacy contamination. The current proposed amendments is the effort by the regulated community and the legislature to expand risk-based/exposure restriction scenarios originally intended for the industrial sites of the past, to natural areas that are now essentially pristine – what we like to call "Pure Michigan". There was one significant change that I fully support, between the original Senate bill and the one that passed out of committee, "farm fields" and "pastures" were removed from the definition of nonresidential. Apparently the agricultural community has more influence in these matters than the environmental groups who have objected to SB891. However, this language was not specifically added to the definition of "residential", so it may not be as significant as I had hoped.

When the regulated community (represented by the Michigan Chamber of Commerce and other business groups) re-write laws that are intended to protect public health, welfare, safety and the environment, the result is the evisceration of the hard fought protections enacted in the 1970s and 1980s. It happens in slow motion and few people notice.



I understand that laws are imperfect and need to be revised to reflect reality. The DEQ has bent over backwards to accommodate the concerns of those the RRD regulates, but I am not aware of any collaboration with the DEQ in the writing of this bill. We got a "boot-legged" copy of the first version. RRD staff have been told for years that if the DEQ gives the regulated community what they want, the DEQ would in turn get sustainable funding. Although there are some things in the bill the DEQ has asked for, there is no mention of funding in SB891. I guess they still want more.

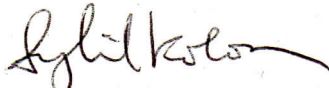
So I plan to share this letter, and my understanding of the potential ramifications of this bill, with anyone who will listen. My hope is that you will be true to your word, and will be a part of this effort, to convince the Governor, if not the legislature, that this is the most misguided and lame environmental legislation Michigan has ever seen.

I am also attaching a letter that former DNR employees sent to Director Harmes in 1993, to give you some additional historical perspective. At RRD's in service last August, I brought a copy of the letter with me and it came up one evening as some of us who had signed that letter reminisced. The process has not changed much in twenty years. Some of those fears have come to fruition. None of us felt good about what we see in SB891 – the memories were bittersweet. I signed the letter in 1993 without hesitation, even though I had been with the department for less than a year. Today I am willing to write a letter to you in my own name, and I believe many other DEQ staff would support me.

As I said at the outset, I cannot entirely separate my personal and work life in writing this letter. You have sought staff input in a way that is much appreciated, but that appreciation has faded with the evolution of SB891. I think it is only fair to tell you how this legislation affects the way I feel about working for the DEQ. I would be one of your staff who would try to determine how we can implement it. Every time Part 201 is amended, it gets harder to interpret and administer.

I had hoped to be in another job now, as one of your Recycling Specialists working out of the Jackson District Office. Interviewing for that job made me realize how much I still have to offer the DEQ. If SB891 passes in its current form, I will need to decide if I should accelerate my retirement plans, or hope for some other position that would not require me to participate in implementing the law. I have to decide if I want to participate in the process of protecting the natural resources of the State of Michigan from inside or outside of the DEQ. I hope you will use your position to help turn this ship around.

Sincerely,



Sybil Kolon

A Steward of the State of Michigan

Attachments: Relevant Citations from SB891  
1993 letter from DNR staff to Director Harmes

cc: Bob Wagner, DEQ  
Sue Erickson, DEQ  
Kathy Shirey, DEQ  
Mitch Adelman, DEQ