

COA Opinion: NREPA does not empower the DEQ to require a township to install a public sanitary sewer system

18. August 2010 By Julie Lam

On a five-mile strip of land located between highway M-25 and Lake Huron, in Worth Township, failing private septic systems have resulted in the discharge of raw sewage into the waters of Lake Huron and its tributaries. The residences and businesses within the township rely solely on private septic systems for waste disposal because the township itself does not operate a public sanitary sewer system. For years, the Michigan Department of Environmental Quality (DEQ) and the county health department have requested that the township install a sanitary sewer system, but the township has refused due to financial constraints. The DEQ brought this action to compel the township to install a sanitary sewer system, under Part 31 of Michigan's Natural Resources and Environmental Protection Act (NREPA), MCL 324.3101 *et seq.* The trial court granted summary disposition to the DEQ and issued an order establishing a time frame for the township to complete the sewer project, imposing a \$60,000 fine on the township, and awarding attorney fees to the DEQ. In a 2-1 decision, *Dep't of Env't Quality v Twp of Worth, No. 289724*, the Court of Appeals reversed and instructed the trial court enter an order granting summary disposition in favor of the township. The majority opinion held that MCL 324.3109(2) does not impose responsibility on a municipality for any sewage discharge that occurs within its jurisdiction, but rather merely creates a rebuttable presumption that the municipality was the source of the discharge. In a [dissent](#), citing the trial court's opinion from the bench in its entirety, Judge O'Connell would affirm. Judge O'Connell explained that, historically, townships have been responsible for infrastructure issues necessary for utilities and access to properties within their boundaries, which includes the oversight of proper sewage disposal. Judge O'Connell stated that the Legislature intended for local units of governments to be responsible for both direct and indirect discharge of raw sewage into state waters, as evidenced in the predecessor to NREPA. In NREPA, Judge O'Connell argued that the purpose of MCL 324.3109(2) is to make municipalities responsible for any sewage discharge within its boundaries, even if a municipality did not actively discharge the sewage. Finally, Judge O'Connell criticized the majority's grant of summary disposition, and argued that at the very least, the case should have been remanded for additional factfinding regarding the township's responsibility for the discharge.