

Act No. 246
Public Acts of 2004
Approved by the Governor
July 22, 2004
Filed with the Secretary of State
July 23, 2004
EFFECTIVE DATE: October 1, 2004

**STATE OF MICHIGAN
92ND LEGISLATURE
REGULAR SESSION OF 2004**

Introduced by Reps. Stakoe, Amos, Stahl, Nofs, Newell, Gaffney, Ward, Garfield, Nitz, Hune, Rocca, Walker, Pastor, Hoogendyk, LaJoy, Brandenburg, Shaffer, Moolenaar, Koetje, Emmons, Farhat and Hummel

ENROLLED HOUSE BILL No. 4730

AN ACT to amend 1994 PA 451, entitled "An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, and assessments; to provide certain appropriations; to prescribe penalties and provide remedies; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts," by amending section 30113 (MCL 324.30113), as amended by 1995 PA 171, and by adding part 33; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

PART 33 AQUATIC NUISANCE CONTROL

Sec. 3301. As used in this part:

(a) "Aquatic nuisance" means an organism that lives or propagates, or both, within the aquatic environment and that impairs the use or enjoyment of the waters of the state, including the intermediate aquatic hosts for schistosomes that cause swimmer's itch.

(b) "Certificate of coverage" means written authorization from the department to implement a project under a general permit.

(c) "Department" means the department of environmental quality.

(d) "Director" means the director of the department.

Sec. 3302. As used in this part:

(a) "General permit" means a permit for a category of activities that the department determines will not negatively impact human health and will have no more than minimal short-term adverse impacts on the natural resources and environment.

(b) "Lake management plan" means a document that contains all of the following:

(i) A description of the physical, chemical, and biological attributes of a waterbody.

(ii) A description of the land uses surrounding a waterbody.

(iii) A detailed description of the historical and planned future management of the waterbody.

(c) "Violation of this part" means a violation of a provision of this part or a permit, certificate of coverage, or order issued under or rule promulgated under this part.

(d) "Waters of the state" or "waterbody" means groundwaters, lakes, ponds, rivers, streams, and wetlands and all other watercourses and waters within the jurisdiction of this state including the Great Lakes bordering this state.

Sec. 3303. (1) Subject to subsections (2), (4), and (5), a person shall not chemically treat either of the following for purposes of aquatic nuisance control unless the person has obtained from the department an individual permit or a certificate of coverage under this part:

(a) Any waters of the state, if water is visibly present or contained in the area of impact at the time of chemical treatment.

(b) The Great Lakes or Lake St. Clair if the area of impact is exposed bottomland located below the ordinary high-water mark.

(2) Subject to subsections (3), (4), and (5), a person may chemically treat waters of the state for purposes of aquatic nuisance control without obtaining from the department an individual permit or a certificate of coverage if all of the following criteria are met:

(a) The waterbody does not have an outlet.

(b) There is no record of species on a list of endangered or threatened species referred to in part 365.

(c) The waterbody has a surface area of less than 10 acres.

(d) If the bottomlands of the waterbody are owned by more than 1 person, written permission for the proposed chemical treatment is obtained from each owner.

(e) The person posts the area of impact in the manner provided in section 3310(d).

(3) A person conducting a chemical treatment authorized under subsection (2) shall maintain any written permissions required under subsection (2) and records of treatment, including treatment date, chemicals applied, amounts applied, and a map indicating the area of impact, for 1 year from the date of each chemical treatment. The records shall be made available to the department upon request.

(4) A person shall not apply for a permit or certificate of coverage under subsection (1) or conduct a chemical treatment described in this section unless the person is 1 or more of the following:

(a) An owner of bottomland within the proposed area of impact.

(b) A lake board established under part 309 for the affected waterbody.

(c) A state or local governmental entity.

(d) A person who has written authorization to act on behalf of a person described in subdivision (a), (b), or (c).

(5) The chemical treatment of waters authorized pursuant to part 31 is not subject to this part.

Sec. 3304. (1) An applicant shall provide a lake management plan as part of an application for permit, if a whole lake treatment is proposed.

(2) An applicant for a permit for a whole lake evaluation treatment may provide scientific evidence and documentation that the use of a specific pesticide, application rate, or means of application will selectively control an aquatic nuisance but not cause unacceptable impacts on native aquatic vegetation, other aquatic or terrestrial life, or human health. Such evaluation treatments include the use of fluridone at rates in excess of 6 parts per billion. The department may place special conditions in a permit issued under this subsection to require additional ambient monitoring to document possible adverse impacts on native aquatic vegetation or other aquatic life. If the department denies the application, the department shall provide to the applicant the scientific rationale for the denial, in writing.

Sec. 3305. (1) A chemical shall not be used in waters of the state for aquatic nuisance control unless it is registered with the EPA, pursuant to section 3 of the federal insecticide, fungicide, and rodenticide act, 7 USC 136a, and the Michigan department of agriculture, pursuant to part 83, for the aquatic nuisance control activity for which it is used.

(2) The department may conduct evaluations of the impacts and effectiveness of any chemicals that are proposed for use for aquatic nuisance control in waters of the state. This may include the issuance of permits for field assessments of the chemicals.

(3) The director, in consultation with the director of the Michigan department of agriculture, may issue an order to prohibit or suspend the use of a chemical for aquatic nuisance control if, based on substantial scientific evidence, use of the chemical causes unacceptable negative impacts to human health or the environment. The department shall not issue permits authorizing the use of such chemicals. In addition, a person shall cease the use of such chemicals upon notification by the department.

Sec. 3306. (1) Until October 1, 2008, an application for a certificate of coverage under this part shall be accompanied by a fee of \$75.00. Until October 1, 2008, subject to subsection (2), an application for an individual permit under this part shall be accompanied by the following fee, based on the size of the area of impact:

- (a) Less than 1/2 acre, \$75.00.
- (b) One-half acre or more but less than 5 acres, \$200.00.
- (c) Five acres or more but less than 20 acres, \$400.00.
- (d) Twenty acres or more but less than 100 acres, \$800.00.
- (e) One hundred acres or more, \$1,500.00.

(2) The department shall forward fees collected under this section to the state treasurer for deposit in the land and water management permit fee fund created in section 30113.

Sec. 3307. (1) The department shall either approve or deny an application for a certificate of coverage by May 1 or within 15 working days after receipt of a complete application, whichever is later. If the department denies an application for a certificate of coverage, the department shall notify the applicant, in writing, of the reasons for the denial.

(2) The department shall approve an application for a permit in whole or part and issue the permit, or shall deny the application, by May 1 or within 30 working days after receipt of a complete application, whichever is later. If the department approves the application in part or denies the application, the department shall, by the same deadline, notify the applicant, in writing, of the reasons for the partial approval or denial.

(3) If the department fails to satisfy the requirements of subsection (1) or (2) with respect to an application for a certificate of coverage or a permit, the department shall pay the applicant an amount equal to 15% of the application fee for that certificate of coverage or permit.

Sec. 3308. An applicant shall obtain authorization to chemically treat the proposed area of impact by obtaining written permission from each person who owns bottomlands in the area of impact. The applicant shall maintain the written permission for 1 year from the expiration date of the permit and shall make the records available to the department upon request. Written permission from each bottomland owner is not required if the applicant is providing, or has contracted to provide, chemical treatment for either of the following:

- (a) A lake board established under part 309 for the waterbody for which chemical treatment is proposed.
- (b) This state or a local unit of government acting under authority of state law to conduct lake improvement projects or to control aquatic vegetation.

Sec. 3309. (1) A permit under this part shall, at a minimum, include all of the following information:

- (a) The active ingredient or the trade name of each chemical to be applied.
- (b) The application rate of each chemical.
- (c) The maximum amount of each chemical to be applied per treatment.
- (d) Minimum length of time between treatments for each chemical.
- (e) A map or maps that clearly delineate the approved area of impact.

(2) The department may impose additional conditions on a permit under this part to protect the natural resources or the public health, to prevent economic loss or impairment of recreational uses, to protect nontarget organisms, or to help ensure control of the aquatic nuisance.

Sec. 3310. As a condition of a permit under this part, the department may require the permittee to do any of the following:

- (a) Notify the department not less than 2 working days in advance of chemical treatment.
- (b) Proceed with chemical treatment only if a department representative is present.
- (c) Allow the department or its representative to collect a sample of the chemical or chemicals used before or during any chemical treatment.
- (d) Post the area of impact before chemical treatment with signs, as follows:
 - (i) Each sign shall be of a brilliant color and made of sturdy, weather-resistant material. Each sign shall be at least 8-1/2 by 11 inches and shall be attached to a supporting device with the bottom of the sign at least 12 inches above the ground surface.
 - (ii) Signs shall be posted in the following locations:
 - (A) Subject to sub-subparagraph (C), along the shoreline of the area of impact not more than 100 feet apart. Signs shall also be posted in riparian lands adjacent to that portion of the shoreline.

(B) Subject to sub-subparagraph (C), for an area of impact of 2 or more acres, at all access sites, boat launching areas, and private and public parks located on the waterbody in conspicuous locations, such as at the entrances, boat ramps, and bulletin boards, if permitted by managers or owners. If the access sites, launching areas, and parks are not to be treated or are not adjacent to the area of impact, then the signs shall clearly indicate the location of the area of impact.

(C) At alternative posting locations approved by the department upon a determination that the locations where signs are otherwise required to be posted are impractical or unfeasible. The department's determination shall be based on a written request from the applicant that includes an explanation of the need for alternative posting locations and a description of the proposed alternative posting locations.

(iii) The department shall specify by rule the information required to be on the signs.

(e) Publish a notice in a local newspaper or make an announcement on a local radio station regarding the chemical treatment. The notice or announcement shall include all of the following information:

(i) The permit number.

(ii) The name of the waterbody.

(iii) A list of the chemicals to be used with corresponding water use restrictions.

(iv) A description of the area of impact.

(v) The proposed treatment dates.

(f) Apply chemicals so that swimming restrictions and fish consumption restrictions are not imposed on any Saturday, Sunday, or state-declared holiday.

(g) Take special precautions to avoid or minimize potential impacts to human health, the environment, and nontarget organisms.

(h) Notify, in writing, an owner of any waterfront property within 100 feet of the area of impact, not less than 7 days and not more than 45 days before the initial chemical treatment. However, if the owner is not the occupant of the waterfront property or the dwelling located on the property, then the owner is responsible for notifying the occupant. Written notification shall include all of the following information:

(i) Name, address, and telephone number of the permittee.

(ii) A list of chemicals proposed for use with corresponding water use restrictions.

(iii) Approximate treatment dates for each chemical to be used.

(i) Complete and return the treatment report form provided by the department for each treatment season.

(j) Perform lake water residue analysis to verify the chemical concentrations in the waterbody according to a frequency, timing, and methodology approved by the department.

(k) Before submitting a permit application, perform aquatic vegetation surveys according to a frequency, timing, and methodology approved by the department.

(l) Use chemical control methods for nuisance aquatic vegetation that are consistent with the approved vegetation management plan submitted separately or as part of a lake management plan. The department may approve modifications to the vegetation management plan upon receipt of a written request from the permittee that includes supporting documentation.

(m) Perform pretreatment monitoring of the target aquatic nuisance population according to a frequency, timing, and methodology that has been approved by the department before submittal of a permit application.

Sec. 3311. The department may make minor revisions to a permit under this part, to minimize the impacts to the natural resources, public health, and safety, or to improve aquatic nuisance control, if the proposed revisions do not involve a change in the scope of the project, and the permittee requests the revisions in writing. The request shall include all of the following information:

(a) The proposed changes to the permit.

(b) An explanation of the necessity for the proposed changes.

(c) Maps that clearly delineate any proposed changes to the area of impact.

(d) Additional information that would help the department reach a decision on a permit amendment.

Sec. 3312. The department may promulgate rules to implement this part.

Sec. 30113. (1) The land and water management permit fee fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from

fund investments. The state treasurer shall annually present to the department an accounting of the amount of money in the fund.

(3) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(4) The department shall expend money from the fund, upon appropriation, only to implement this part and the following:

- (a) Sections 3104, 3107, and 3108.
- (b) Part 33.
- (c) Part 303.
- (d) Part 315.
- (e) Part 323.
- (f) Part 325.
- (g) Part 353.
- (h) Section 117 of the land division act, 1967 PA 288, MCL 560.117.

(5) The department shall process permit applications for those acts and parts of acts cited in subsection (4) under which permits are issued within 60 days after receiving a completed permit application unless the act or part specifically provides for permit application processing time limits.

(6) The department shall annually report to the legislature on both of the following:

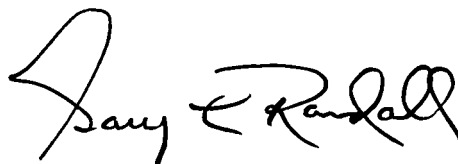
- (a) How money in the fund was expended during the previous fiscal year.
- (b) For permit programs funded with money in the fund, the average length of time for department action on permit applications for each class of permits reviewed.

Enacting section 1. Sections 12561, 12562, and 12563 of the public health code, 1978 PA 368, MCL 333.12561, 333.12562, and 333.12563, are repealed.

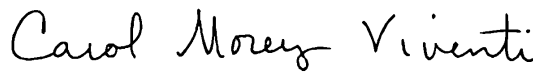
Enacting section 2. This amendatory act takes effect October 1, 2004.

Enacting section 3. This amendatory act does not take effect unless House Bill No. 4729 of the 92nd Legislature is enacted into law.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor