

Act No. 33
Public Acts of 2005
Approved by the Governor
June 2, 2005
Filed with the Secretary of State
June 6, 2005
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**STATE OF MICHIGAN
93RD LEGISLATURE
REGULAR SESSION OF 2005**

Introduced by Senators Birkholz, Sikkema, McManus, Hammerstrom, Van Woerkom, Allen, Toy, Patterson, Brown, Kuipers, Jelinek, Goschka, Cropsey, Prusi, Stamas, Brater, Cassis, Bishop, Gilbert, Hardiman, Basham, George, Sanborn, Barcia, Switalski, Emerson, Clarke, Olshove, Leland, Cherry, Jacobs, Schauer, Bernero, Clark-Coleman, Garcia, Johnson and Scott

ENROLLED SENATE BILL No. 332

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 sections 3103, 3104, and 3112 (MCL 324.3103, 324.3104, and 324.3112), sections 3103 and 3112 as amended by 2004 PA 91 and section 3104 as amended by 2004 PA 325.

The People of the State of Michigan enact:

Sec. 3103. (1) The department shall protect and conserve the water resources of the state and shall have control of the pollution of surface or underground waters of the state and the Great Lakes, which are or may be affected by waste disposal of any person. The department may make or cause to be made surveys, studies, and investigations of the uses of waters of the state, both surface and underground, and cooperate with other governments and governmental units and agencies in making the surveys, studies, and investigations. The department shall assist in an advisory capacity a flood control district that may be authorized by the legislature. The department, in the public interest, shall appear and present evidence, reports, and other testimony during the hearings involving the creation and organization of flood control districts. The department shall advise and consult with the legislature on the obligation of the state to participate in the costs of construction and maintenance as provided for in the official plans of a flood control district or intercounty drainage district.

(2) The department shall enforce this part and may promulgate rules as it considers necessary to carry out its duties under this part. However, notwithstanding any rule-promulgation authority that is provided in this part, except for rules authorized under section 3112(6), the department shall not promulgate any additional rules under this part after December 31, 2006.

(3) The department may promulgate rules and take other actions as may be necessary to comply with the federal water pollution control act, 33 USC 1251 to 1387, and to expend funds available under such law for extension or improvement of the state or interstate program for prevention and control of water pollution. This part shall not be construed as authorizing the department to expend or to incur any obligation to expend any state funds for such purpose in excess of any amount that is appropriated by the legislature.

(4) Notwithstanding the limitations on rule promulgation under subsection (2), rules promulgated under this part before January 1, 2007 shall remain in effect unless rescinded.

Sec. 3104. (1) The department is designated the state agency to cooperate and negotiate with other governments, governmental units, and governmental agencies in matters concerning the water resources of the state, including, but not limited to, flood control, beach erosion control, water quality control planning, development, and management, and the control of aquatic nuisance species. The department shall have control over the alterations of natural or present watercourses of all rivers and streams in the state to assure that the channels and the portions of the floodplains that are the floodways are not inhabited and are kept free and clear of interference or obstruction that will cause any undue restriction of the capacity of the floodway. The department may take steps as may be necessary to take advantage of any act of congress that may be of assistance in carrying out the purposes of this part, including the water resources planning act, 42 USC 1962 to 1962d-3, and the federal water pollution control act, 33 USC 1251 to 1387.

(2) In order to address discharges of aquatic nuisance species from oceangoing vessels that damage water quality, aquatic habitat, or fish or wildlife, the department shall facilitate the formation of a Great Lakes aquatic nuisance species coalition. The Great Lakes aquatic nuisance species coalition shall be formed through an agreement entered into with other states in the Great Lakes basin to implement on a basin-wide basis water pollution laws that prohibit the discharge of aquatic nuisance species into the Great Lakes from oceangoing vessels. The department shall seek to enter into an agreement that will become effective not later than January 1, 2007. The department shall consult with the department of natural resources prior to entering into this agreement. Upon entering into the agreement, the department shall notify the Canadian Great Lakes provinces of the terms of the agreement. The department shall seek funding from the Great Lakes protection fund authorized under part 331 to implement the Great Lakes aquatic nuisance species coalition.

(3) The department shall report to the governor and to the legislature at least annually on any plans or projects being implemented or considered for implementation. The report shall include requests for any legislation needed to implement any proposed projects or agreements made necessary as a result of a plan or project, together with any requests for appropriations. The department may make recommendations to the governor on the designation of areawide water quality planning regions and organizations relative to the governor's responsibilities under the federal water pollution control act, 33 USC 1251 to 1387.

(4) A person shall not alter a floodplain except as authorized by a floodplain permit issued by the department pursuant to part 13. An application for a permit shall include information that may be required by the department to assess the proposed alteration's impact on the floodplain. If an alteration includes activities at multiple locations in a floodplain, 1 application may be filed for combined activities.

(5) Except as provided in subsections (6), (7), and (9), until October 1, 2008, an application for a floodplain permit shall be accompanied by a fee of \$500.00. Until October 1, 2008, if the department determines that engineering computations are required to assess the impact of a proposed floodplain alteration on flood stage or discharge characteristics, the department shall assess the applicant an additional \$1,500.00 to cover the department's cost of review.

(6) Until October 1, 2008, an application for a floodplain permit for a minor project category shall be accompanied by a fee of \$100.00. Minor project categories shall be established by rule and shall include activities and projects that are similar in nature and have minimal potential for causing harmful interference.

(7) If work has been done in violation of a permit requirement under this part and restoration is not ordered by the department, the department may accept an application for a permit for that work if the application is accompanied by a fee equal to 2 times the permit fee required under subsection (5) or (6).

(8) 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.

(9) A project that requires review and approval under this part and 1 or more of the following is subject to only the single highest permit fee required under this part or the following:

- (a) Part 301.
- (b) Part 303.
- (c) Part 323.
- (d) Part 325.
- (e) Section 117 of the land division act, 1967 PA 288, MCL 560.117.

Sec. 3112. (1) A person shall not discharge any waste or waste effluent into the waters of this state unless the person is in possession of a valid permit from the department.

(2) An application for a permit under subsection (1) shall be submitted to the department. Within 30 days after an application for a new or increased use is received, the department shall determine whether the application is administratively complete. Within 90 days after an application for reissuance of a permit is received, the department shall determine whether the application is administratively complete. If the department determines that an application is not complete, the department shall notify the applicant in writing within the applicable time period. If the department does not make a determination as to whether the application is complete within the applicable time period, the application shall be considered to be complete.

(3) The department shall condition the continued validity of a permit upon the permittee's meeting the effluent requirements that the department considers necessary to prevent unlawful pollution by the dates that the department considers to be reasonable and necessary and to assure compliance with applicable federal law and regulations. If the department finds that the terms of a permit have been, are being, or may be violated, it may modify, suspend, or revoke the permit or grant the permittee a reasonable period of time in which to comply with the permit. The department may reissue a revoked permit upon a showing satisfactory to the department that the permittee has corrected the violation. A person who has had a permit revoked may apply for a new permit.

(4) If the department determines that a person is causing or is about to cause unlawful pollution of the waters of this state, the department may notify the alleged offender of its determination and enter an order requiring the person to abate the pollution or refer the matter to the attorney general for legal action, or both.

(5) A person who is aggrieved by an order of abatement of the department or by the reissuance, modification, suspension, or revocation of an existing permit of the department executed pursuant to this section may file a sworn petition with the department setting forth the grounds and reasons for the complaint and asking for a contested case hearing on the matter pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. A petition filed more than 60 days after action on the order or permit may be rejected by the department as being untimely.

(6) Beginning January 1, 2007, all oceangoing vessels engaging in port operations in this state shall obtain a permit from the department. The department shall issue a permit for an oceangoing vessel only if the applicant can demonstrate that the oceangoing vessel will not discharge aquatic nuisance species or if the oceangoing vessel discharges ballast water or other waste or waste effluent, that the operator of the vessel will utilize environmentally sound technology and methods, as determined by the department, that can be used to prevent the discharge of aquatic nuisance species. The department shall cooperate to the fullest extent practical with other Great Lakes basin states, the Canadian Great Lakes provinces, the Great Lakes panel on aquatic nuisance species, the Great Lakes fishery commission, the international joint commission, and the Great Lakes commission to ensure development of standards for the control of aquatic nuisance species that are broadly protective of the waters of the state and other natural resources. Permit fees for permits under this subsection shall be assessed as provided in section 3120. The permit fees for an individual permit issued under this subsection shall be the fees specified in section 3120(1)(a) and (5)(a). The permit fees for a general permit issued under this subsection shall be the fees specified in section 3120(1)(c) and (5)(b)(i). Permits under this subsection shall be issued in accordance with the timelines provided in section 3120. The department may promulgate rules to implement this subsection.

Enacting section 1. This amendatory act does not take effect unless House Bill No. 4603 of the 93rd Legislature is enacted into law.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Ray E. Randall

Clerk of the House of Representatives

Approved

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Governor