

STATE OF MICHIGAN
99TH LEGISLATURE
REGULAR SESSION OF 2018

Introduced by Senator Casperson

ENROLLED SENATE BILL No. 1211

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 protect the people's right to hunt and fish; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, assessments, and donations; to provide certain appropriations; to prescribe penalties and provide remedies; and to repeal acts and parts of acts," by amending sections 1307, 1511, 30101, 30112, 30301, 30304, 30305, 30306, 30307, 30314, 30316, 30319, 30321, and 32301 (MCL 324.1307, 324.1511, 324.30101, 324.30112, 324.30301, 324.30304, 324.30305, 324.30306, 324.30307, 324.30314, 324.30316, 324.30319, 324.30321, and 324.32301), section 1307 as amended by 2018 PA 268, section 1511 as added by 2011 PA 237, section 30101 as amended by 2014 PA 351, sections 30112, 30314, 30316, 30319, and 32301 as added by 1995 PA 59, section 30301 as amended by 2012 PA 247, section 30304 as amended by 2004 PA 325, sections 30305, 30306, and 30321 as amended by 2013 PA 98, and section 30307 as amended by 2006 PA 430.

The People of the State of Michigan enact:

Sec. 1307. (1) By the processing deadline, the department shall approve or deny an application for a permit.

(2) If requested by the permit applicant, the department shall extend the processing period for a permit by not more than 120 days, as specified by the applicant. If requested by the permit applicant, the department may extend the processing period beyond the additional 120 days. However, a processing period shall not be extended under this subsection to a date later than 1 year after the application period ends.

(3) A processing period is tolled from the date that a permit applicant submits a petition under section 1315(1) until the date that a decision of the director is made under section 1315(6). If a permit applicant submits a petition under section 1315(1), the department shall not approve or deny the application for the permit under subsection (1) until after the director issues a decision under section 1315(6).

(4) The approval or denial of an application for a permit shall be in writing and shall be based upon evidence that would meet the standards in section 75 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.275.

(5) Approval of an application for a permit may be granted with conditions or modifications necessary to achieve compliance with the part or parts of this act under which the permit is issued.

(6) A denial of an application for a permit or, for a permit under part 301 or 303, an approval with modification of an application for a permit shall document, and any review upholding the denial or modification shall determine, to the extent practical, all of the following:

- (a) That the decision is based on specifically cited provisions of this act or rules promulgated under this act.
- (b) That the decision is based upon sufficient facts or data, which are recorded in the file.
- (c) To the extent applicable, all of the following:
 - (i) That the decision is the product of reliable scientific principles and methods.

(ii) That the decision has applied the principles and methods reliably to the facts.

(d) In the case of denial of an application for a permit under part 301 or 303, suggestions on changes to allow the permit to be approved.

(7) Except for permits described in subsection (8), if the department fails to satisfy the requirements of subsection (1) with respect to an application for a permit, the department shall pay the applicant an amount equal to 15% of the greater of the following, as applicable:

(a) The amount of the application fee for that permit.

(b) If an assessment or other fee is charged on an annual or other periodic basis by the department to a person holding the permit for which the application was submitted, the amount of the first periodic charge of that assessment or other fee for that permit.

(8) If the department fails to satisfy the requirements of subsection (1) with respect to a permit required by section 11509, 11512, 30304, or 32603, the application shall be considered to be approved and the department shall be considered to have made any determination required for approval.

(9) The failure of the department to satisfy the requirements of subsection (1) or the fact that the department is required to make a payment under subsection (7) or is considered to have approved a permit under subsection (8) shall not be used by the department as the basis for discriminating against the applicant. If the department is required to make a payment under subsection (7), the application shall be processed in sequence with other applications for the same type of permit, based on the date on which the processing period began, unless the director determines on an application-by-application basis that the public interest is best served by processing in a different order.

(10) If the department fails to satisfy the requirements of subsection (1) with respect to 10% or more of the applications for a particular type of permit received during a quarter of the state fiscal year, the department shall immediately devote resources from that program to eliminate any backlog and satisfy the requirements of subsection (1) with respect to new applications for that type of permit within the next fiscal quarter.

(11) If the department fails to satisfy the requirements of subsection (1), the director shall notify the appropriations committees of the senate and house of representatives of the failure. The notification shall be in writing and shall include both of the following:

(a) An explanation of the reason for the failure.

(b) A statement of the amount the department was required to pay the applicant under subsection (7) or a statement that the department was required to consider the application to be approved under subsection (8), as applicable.

Sec. 1511. (1) Subject to subsection (2) and notwithstanding any other provision of this act, before initiating a civil enforcement action under this act against a person, the department shall do both of the following:

(a) Beginning May 1, 2019, provide the person in writing a list of each specific provision of statute, rule, or permit that the person is alleged to have violated and a statement of the facts constituting the violation.

(b) Contact the person and extend an offer for staff of the department to meet with the person to discuss the potential civil enforcement action and potential resolution of the issue. If the person agrees to meet with the department, the department shall not initiate a civil enforcement action until after the meeting is held, unless the meeting is not held within a reasonable time of not less than 60 days.

(2) Subsection (1) does not apply under any of the following circumstances:

(a) The civil enforcement action is a civil infraction action.

(b) The department determines that the violation that is the subject of the potential civil enforcement action constitutes an imminent and substantial endangerment of the public health, safety, or welfare or of the environment.

(3) As used in this section:

(a) "Department" means the department, agency, or officer authorized by this act to approve or deny an application for a permit.

(b) "Permit" means a permit or operating license issued under this act.

Sec. 30101. As used in this part:

(a) "Bottomland" means the land area of an inland lake or stream that lies below the ordinary high-water mark and that may or may not be covered by water.

(b) "Bulkhead line" means a line that is established pursuant to this part beyond which dredging, filling, or construction of any kind is not allowed without a permit.

(c) "Dam" means an artificial barrier, including dikes, embankments, and appurtenant works, that impounds, diverts, or is designed to impound or divert water.

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

(e) "Expand" means to occupy a larger area of an inland lake or stream than authorized by a permit issued under this part for marina mooring structures and watercraft moored at the marina.

(f) "Fund" means the land and water management permit fee fund created in section 30113.

(g) "Height of the dam" means the difference in elevation measured vertically between the natural bed of an inland lake or stream at the downstream toe of the dam, or, if it is not across a stream channel or watercourse, from the lowest elevation of the downstream toe of the dam, to the design flood elevation or to the lowest point of the top of the dam, whichever is less.

(h) "Impoundment" means water held back by a dam, dike, floodgate, or other barrier.

(i) "Inland lake or stream" means either of the following:

(i) An artificial or natural lake, pond, or impoundment that is a water of the United States as that term is used in section 502(7) of the federal water pollution control act, 33 USC 1362.

(ii) A natural or artificial lake, pond, or impoundment; a river, stream, or creek which may or may not be serving as a drain as defined by the drain code of 1956, 1956 PA 40, MCL 280.1 to 280.630; or any other body of water that has definite banks, a bed, and visible evidence of a continued flow or continued occurrence of water, including the St. Marys, St. Clair, and Detroit Rivers.

Inland lake or stream does not include the Great Lakes, Lake St. Clair, or a lake or pond that has a surface area of less than 5 acres.

(j) "Marina" means a facility that is owned or operated by a person, extends into or over an inland lake or stream, and offers service to the public or members of the marina for docking, loading, or other servicing of recreational watercraft.

(k) "Minor offense" means either of the following violations of this part if the project involved in the offense is a minor project or the department determines that restoration of the affected property is not required:

(i) The failure to obtain a permit under this part.

(ii) A violation of a permit issued under this part.

(l) "Mooring structures" means structures used to moor watercraft, including, but not limited to, docks, piers, pilings, mooring anchors, lines and buoys, and boat hoists.

(m) "Ordinary high-water mark" means the line between upland and bottomland that persists through successive changes in water levels, below which the presence and action of the water is so common or recurrent that the character of the land is marked distinctly from the upland and is apparent in the soil itself, the configuration of the surface of the soil, and the vegetation. On an inland lake that has a level established by law, it means the high established level. Where water returns to its natural level as the result of the permanent removal or abandonment of a dam, it means the natural ordinary high-water mark.

(n) "Project" means an activity that requires a permit pursuant to section 30102.

(o) "Property owners' association" means any group of organized property owners publishing a directory of their membership, the majority of which are riparian owners and are located on the inland lake or stream that is affected by the proposed project.

(p) "Reconfigure" means to, without expanding the marina, do either of the following:

(i) Change the location of the dock or docks and other mooring structures at the marina to occupy an area of the inland lake or stream that was not previously authorized by a permit issued under this part.

(ii) Decrease the distance available for ingress and egress to an outside slip as described in section 30106a.

(q) "Riparian interest area" means that portion of an inland lake or stream over which a riparian owner has an ownership interest.

(r) "Riparian owner" means a person who has riparian rights.

(s) "Riparian rights" means those rights which are associated with the ownership of the bank or shore of an inland lake or stream.

(t) "Seasonal structure" includes any type of dock, boat hoist, ramp, raft, or other recreational structure that is placed into an inland lake or stream and removed at the end of the boating season.

(u) "Seawall" means a vertically sloped wall constructed to break the force of waves and retain soil for the purpose of shore protection.

(v) "Structure" includes a wharf, dock, pier, seawall, dam, weir, stream deflector, breakwater, groin, jetty, sewer, pipeline, cable, and bridge.

(w) "Upland" means the land area that lies above the ordinary high-water mark.

Sec. 30112. (1) The department may commence a civil action in the circuit court of the county in which a violation occurs to enforce compliance with this part, to restrain violation of this part or any action contrary to an order of the department denying a permit, to enjoin the further performance of, or order the removal of, any project that is undertaken contrary to this part or after denial of a permit by the department, or to order the restoration of the affected area to its prior condition.

(2) In a civil action commenced under this part, the circuit court, in addition to any other relief granted, may assess a civil fine of not more than \$5,000.00 per day for each day of violation.

(3) Except as provided in subsection (4), a person who violates this part or a permit issued under this part is guilty of a misdemeanor, punishable by a fine of not more than \$10,000.00 per day for each day of violation.

(4) A person who commits a minor offense is guilty of a misdemeanor, punishable by a fine of not more than \$500.00 for each violation. A law enforcement officer may issue and serve an appearance ticket upon a person for a minor offense pursuant to sections 9c to 9g of chapter IV of the code of criminal procedure, 1927 PA 175, MCL 764.9c to 764.9g.

(5) A person who knowingly makes a false statement, representation, or certification in an application for a permit or in a notice or report required by a permit, or a person who knowingly renders inaccurate any monitoring device or method required to be maintained by a permit, is guilty of a misdemeanor, punishable by a fine of not more than \$10,000.00 per day for each day of violation.

(6) Any civil sanction assessed, sought, or agreed to by the department shall be appropriate to the violation.

Sec. 30301. (1) As used in this part:

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

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

(c) "Exceptional wetland" means wetland that provides physical or biological functions essential to the natural resources of this state and that may be lost or degraded if not preserved through an approved site protection and management plan for the purposes of providing compensatory wetland mitigation.

(d) "Fill material" means soil, rocks, sand, waste of any kind, or any other material that displaces soil or water or reduces water retention potential.

(e) "Hydric soil" means a soil that formed under conditions of saturation, flooding, or ponding long enough during the growing season to develop anaerobic conditions in the upper part.

(f) "Landscape level wetland assessment" means the use of aerial photographs, maps, and other remotely sensed information to predict and evaluate wetland characteristics and functions in the context of all of the following:

(i) The wetland's landscape position and hydrologic characteristics.

(ii) The surrounding landscape.

(iii) The historic extent and condition of the wetland.

(g) "Minor drainage" includes ditching and tiling for the removal of excess soil moisture incidental to the planting, cultivating, protecting, or harvesting of crops or improving the productivity of land in established use for agriculture, horticulture, silviculture, or lumbering.

(h) "Nationwide permit" means a nationwide permit issued by the United States Army Corps of Engineers under 72 FR 11091 to 11198 (March 12, 2007), including all general conditions, regional conditions, and conditions imposed by this state pursuant to a water quality certification under section 401 of title IV of the federal water pollution control act, 33 USC 1341, or a coastal zone management consistency determination under section 307 of the coastal zone management act of 1972, 16 USC 1456.

(i) "Ordinary high-water mark" means the ordinary high-water mark as specified in section 32502.

(j) "Person" means an individual, sole proprietorship, partnership, corporation, association, municipality, this state, an instrumentality or agency of this state, the federal government, an instrumentality or agency of the federal government, or other legal entity.

(k) "Rapid wetland assessment" means a method for generally assessing the functions, values, and condition of individual wetlands based on existing data and field indicators.

(l) "Rare and imperiled wetland" means any of the following:

(i) Great Lakes marsh.

(ii) Southern wet meadow.

(iii) Inland salt marsh.

(iv) Coastal plain marsh.

(v) Interdunal wetland.

(vi) Lakeplain wet prairie.

(vii) Lakeplain wet-mesic prairie.

(viii) Coastal fen.

(ix) Wet-mesic prairie.

(x) Wet prairie.

(xi) Prairie fen.

- (xii) Northern fen.
- (xiii) Patterned fen.
- (xiv) Poor fen.
- (xv) Muskeg.
- (xvi) Relict conifer swamp.
- (xvii) Southern floodplain forest.

(m) “Water dependent” means requiring access or proximity to or siting within an aquatic site to fulfill its basic purpose.

(n) “Wetland” means a land or water feature, commonly referred to as a bog, swamp, or marsh, inundated or saturated by water at a frequency and duration sufficient to support, and that under normal circumstances does support, hydric soils and a predominance of wetland vegetation or aquatic life. A land or water feature is not a wetland unless it meets any of the following:

(i) Is a water of the United States as that term is used in section 502(7) of the federal water pollution control act, 33 USC 1362.

(ii) Is contiguous to the Great Lakes, Lake St. Clair, an inland lake or pond, or a stream. As used in this subparagraph, “pond” does not include a farm or stock pond constructed consistent with the exemption under section 30305(2)(g).

(iii) Is more than 5 acres in size.

(iv) Has the documented presence of an endangered or threatened species under part 365 or the endangered species act of 1973, Public Law 93-205.

(v) Is a rare and imperiled wetland.

(2) In 2019 and every 5 years thereafter, the department of natural resources may make recommendations to the legislature for changes in the list of rare and imperiled wetlands to reflect the status of each type of wetland to be included on the list as rare and imperiled throughout this state.

(3) As used in section 30312f:

(a) “Altered or degraded wetland” means wetland that meets any of the following criteria:

(i) Has been partially or fully drained, such as by ditching, tiling, or pumping.

(ii) Has been partially or fully filled by direct placement of material in the wetland or significant sedimentation.

(iii) Invasive plant species dominate in a majority of the vegetated surface area of the wetland.

(iv) Has undergone land use conversion or alteration to vegetation, soil, or hydrology that currently affects the wetland functions and services.

(b) “Former wetland” means land that was wetland but that has been modified to the point that it no longer has the hydrologic characteristics of wetland.

(c) “Net increase in wetland functions and services” means an increase in 1 or more wetland functions and services with not more than a minimal decrease in other wetland functions and services.

(d) “Voluntary wetland restoration project”, subject to subdivision (e), means any of the following:

(i) Activities that are voluntarily undertaken to restore, reestablish, rehabilitate, or enhance altered or degraded wetland or former wetland and that result in a net increase in wetland functions and services.

(ii) Activities to maintain or manage sites where activities described in subparagraph (i) have taken place, including sites restored before October 1, 1980, the effective date of former 1979 PA 203.

(e) Voluntary wetland restoration project does not include an activity undertaken to fulfill, currently or in the future, a federal, state, or local wetland permit mitigation requirement.

(f) “Wetland functions and services” means any of the following:

(i) Wetland hydrology that approximates the predisturbance condition or that emulates the natural condition of the wetland.

(ii) Fish and wildlife habitat quality or quantity.

(iii) Plant community quality, characterized by native vegetation types and diversity.

(iv) Water- and soil-related functions of the wetland, such as nutrient removal, sediment retention, flood control, or groundwater recharge.

(v) Recreational use of the wetland, including, but not limited to, fishing, hunting, trapping, and birdwatching.

(4) The department and local units of government shall apply the technical wetland delineation standards set forth in the United States Army Corps of Engineers January 1987 Wetland Delineation Manual, technical report Y-87-1, and appropriate regional United States Army Corps of Engineers supplements, in identifying wetland boundaries under this part, including, but not limited to, section 30307.

Sec. 30304. Except as otherwise provided in this part or by a permit issued by the department under this part and pursuant to part 13, a person shall not do any of the following:

- (a) Deposit or permit the placing of fill material in a wetland.
- (b) Dredge, remove, or permit the removal of soil or minerals from a wetland.
- (c) Construct, operate, or maintain any use or development in a wetland.
- (d) Drain surface water from a wetland.

Sec. 30305. (1) Activities that require a permit under part 325 or part 301 or a discharge that is authorized by a discharge permit under section 3112 or 3113 do not require a permit under this part.

(2) The following uses are allowed in a wetland without a permit subject to other laws of this state and the owner's regulation:

- (a) Fishing, trapping, or hunting.
- (b) Swimming or boating.
- (c) Hiking.

(d) Grazing of animals, including fencing and post placement if the fence is designed to control livestock, does not exceed 11 feet in height, and utilizes an amount of material that does not exceed that of a woven wire fence utilizing 6-inch vertical spacing and posts.

(e) Farming, horticulture, silviculture, lumbering, and ranching activities, including plowing, irrigation, irrigation ditching, seeding, cultivating, minor drainage, harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices. All of the following apply for the purposes of this subdivision:

(i) Beginning October 1, 2013, to be allowed in a wetland without a permit, these activities shall be part of an established ongoing farming, ranching, horticultural, or silvicultural operation. Farming and silvicultural activities on areas lying fallow as part of a conventional rotational cycle are part of an established ongoing operation, unless modifications to the hydrological regime or mechanized land clearing are necessary to resume operation. Activities that bring into farming, ranching, horticultural, or silvicultural use an area not in any of these uses, or that convert an area from a forested or silvicultural use to a farming, ranching, or horticultural use, are not part of an established ongoing operation.

(ii) Minor drainage does not include drainage associated with the immediate or gradual conversion of a wetland to a nonwetland, or conversion from 1 wetland use to another. Minor drainage does not include the construction of a canal, ditch, dike, or other waterway or structure that drains or otherwise significantly modifies a stream, lake, or wetland.

(iii) Wetland altered under this subdivision shall not be used for a purpose other than a purpose described in this section without a permit from the department.

(f) Maintenance or operation of serviceable structures in existence on October 1, 1980 or constructed pursuant to this part or former 1979 PA 203.

(g) Construction or maintenance of farm or stock ponds.

(h) Maintenance of an agricultural drain, regardless of outlet, if all of the following requirements are met:

(i) The maintenance includes only activities that maintain the location, depth, and bottom width of the drain as constructed or modified at any time before July 1, 2014.

(ii) The maintenance is performed by the landowner or pursuant to the drain code of 1956, 1956 PA 40, MCL 280.1 to 280.630.

(iii) The maintenance does not include any modification that results in additional wetland drainage or conversion of a wetland to a use to which it was not previously subject.

(i) Maintenance of a drain that was legally established and constructed pursuant to the drain code of 1956, 1956 PA 40, MCL 280.1 to 280.630, if the drain was constructed before January 1, 1973 or under a permit issued pursuant to this part. As used in this subdivision, "maintenance of a drain" means the physical preservation of the location, depth, and bottom width of a drain and appurtenant structures to restore the function and approximate capacity of the drain as constructed or modified at any time before July 1, 2014, including the placement of spoils removed from the drain in locations along that drain where spoils have been previously placed. Maintenance of a drain under this subdivision does not include any modification that results in additional wetland drainage or conversion of a wetland to a use to which it was not previously subject.

(j) Construction or maintenance of farm roads, forest roads, or temporary roads for moving mining or forestry equipment, if the roads are constructed and maintained in a manner to ensure that any adverse effect on the wetland will be minimized. Borrow material for road construction or maintenance shall be taken from upland sources if feasible. In determining whether an alternative will minimize any adverse effect on the wetland, the department shall consider cost, existing technology, and logistics in light of overall project purposes.

(k) Maintenance of public streets, highways, or roads that meets all of the following requirements:

- (i) Does not include any modification that changes the original location or footprint.

(ii) Is done in a manner that minimizes any adverse effect on the wetland.

(l) Maintenance or repair of utility lines and associated support structures that meets all of the following requirements:

(i) Is done in a manner that minimizes any adverse effect on the wetland.

(ii) Does not include any modification to the character, scope, or size of the originally constructed design.

(iii) Does not convert a wetland area to a use to which it was not previously subject.

For the purposes of this subdivision and subdivision (m), "utility line" means any pipe or pipeline used for the transportation of any gaseous, liquid, liquescent, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone or telegraph messages, or radio or television communication.

(m) Installation of utility lines having a diameter of 6 inches or less using directional drilling or boring, or knifing-in, and the placement of poles with minimal (less than 1 cubic yard) structure support, if the utility lines and poles are installed in a manner that minimizes any adverse effect on the wetland. Directional drilling or boring under this subdivision shall meet all of the following requirements:

(i) The top of the utility line is at least 4 feet below the soil surface of the wetland. However, if the presence of rock prevents the placement of the utility line at the depth otherwise required by this subparagraph, the bottom of the utility line is not placed higher than the top of the rock.

(ii) The entry and exit holes are located a sufficient distance from the wetland to ensure that disturbance of the wetland does not occur.

(iii) The operation does not result in the eruption or release of any drilling fluids up through the ground and into the wetland and there is an adequate plan to respond to any release of drilling mud or other fill material.

(n) Operation or maintenance, including reconstruction of recently damaged parts, of serviceable dikes and levees in existence on October 1, 1980 or constructed pursuant to this part or former 1979 PA 203.

(o) Placement of biological residuals from activities, including the cutting of woody vegetation or the in-place grinding of tree stumps, performed under this section within a wetland, if all the biological residuals originate within that wetland.

(3) An activity in a wetland that was effectively drained for farming before October 1, 1980 and that on and after October 1, 1980 has continued to be effectively drained as part of an ongoing farming operation is not subject to regulation under this part.

(4) A wetland that is incidentally created as a result of 1 or more of the following activities is not subject to regulation under this part:

(a) Excavation as part of commercial sand, gravel, or mineral mining, if the area was not a wetland before excavation. This exemption from regulation applies until the property on which the wetland is located meets both of the following requirements:

(i) Is no longer used for excavation as part of commercial sand, gravel, or mineral mining.

(ii) Is being used for another purpose unrelated to excavation as part of commercial sand, gravel, or mineral mining.

(b) Construction and operation of a water treatment pond, lagoon, or storm water facility in compliance with the requirements of state or federal water pollution control laws.

(c) A diked area associated with a landfill if the landfill complies with the terms of the landfill construction permit and if the diked area was not a wetland before diking.

(d) Construction of drains in upland for the sole purpose of removing excess soil moisture from upland areas that are primarily in agricultural use.

(e) Construction of roadside ditches in upland for the sole purpose of removing excess soil moisture from upland.

(f) An agricultural soil and water conservation practice designed, constructed, and maintained for the purpose of enhancing water quality.

(5) An area that becomes contiguous to a water body created as a result of commercial excavation for sand, gravel, or mineral mining is not subject to regulation under this part solely because it is contiguous to the created water body. This exemption from regulation applies until the property on which the wetland is located meets both of the following requirements:

(a) Is no longer used for excavation as part of commercial sand, gravel, or mineral mining.

(b) Is being used for another purpose unrelated to excavation as part of commercial sand, gravel, or mineral mining.

(6) Except as provided in subsection (7), the following activities are not subject to regulation under this part:

(a) Leveling of sand, removal of vegetation, grooming of soil, or removal of debris, in an area of unconsolidated material predominantly composed of sand, rock, or pebbles, located between the ordinary high-water mark and the water's edge.

(b) Mowing of vegetation between the ordinary high-water mark and the water's edge.

(7) Subsection (6) does not apply to lands included in the survey of the delta of the St. Clair River, otherwise referred to as the St. Clair flats, located within Clay township, St. Clair county, as provided for in 1899 PA 175.

(8) As used in this part, "agricultural drain" means a human-made conveyance of water that meets all of the following requirements:

(a) Does not have continuous flow.

(b) Flows primarily as a result of precipitation-induced surface runoff or groundwater drained through subsurface drainage systems.

(c) Serves agricultural production.

(d) Was constructed before January 1, 1973, or was constructed in compliance with this part or former 1979 PA 203.

Sec. 30306. (1) Except as provided in section 30307(6), to obtain a permit for a use or development listed in section 30304, a person shall file an application with the department on a form provided by the department. The application shall include all of the following:

(a) The person's name and address.

(b) The location of the wetland.

(c) A description of the wetland.

(d) A statement and appropriate drawings describing the proposed use or development.

(e) The wetland owner's name and address.

(f) An environmental assessment of the proposed use or development if requested by the department. The assessment shall include the effects upon wetland benefits and the effects upon the water quality, flow, and levels, and the wildlife, fish, and vegetation within any contiguous inland lake or stream.

(2) For the purposes of subsection (1), a proposed use or development of a wetland shall be covered by a single permit application under this part if the scope, extent, and purpose of a use or development are made known at the time of the application for the permit.

(3) Except as provided in subsections (4) and (5), an application for a permit submitted under subsection (1) shall be accompanied by the following application fee, as applicable:

(a) For a project in a category of activities for which a general permit is issued under section 30312(2), a fee of \$50.00.

(b) For activities included in a minor project category established under section 30312(1), a fee of \$100.00.

(c) For a major project, including any of the following, a fee of \$2,000.00:

(i) Filling or draining of 1 acre or more of coastal or inland wetland.

(ii) 10,000 cubic yards or more of wetland fill.

(iii) A new golf course affecting wetland.

(iv) A subdivision affecting wetland.

(v) A condominium affecting wetland.

(d) For all other projects, a fee of \$500.00.

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

(a) Section 3104.

(b) Part 301.

(c) Part 323.

(d) Part 325.

(e) Section 117 of the land division act, 1967 PA 288, MCL 560.117.

(5) If work has been done in violation of a permit requirement under this part, the department shall consider accepting and may accept an application for a permit if the application is accompanied by a fee equal to twice the application fee otherwise required under this section.

(6) If the department determines that a permit is not required under this part or denies an application for a permit under this part, the department shall promptly refund the application fee paid under this section.

(7) The department may issue a conditional permit before the expiration of the 20-day period referred to in section 30307 if emergency conditions warrant a project to protect property or the public health, safety, or welfare.

Sec. 30307. (1) Within 60 days after receipt of the completed application and fee, the department may hold a hearing. If a hearing is held, it shall be held in the county where the wetland to which the permit is to apply is located. Notice of the hearing shall be given in the same manner as for the promulgation of rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. The department may approve or disapprove a permit application

without a public hearing unless a person requests a hearing in writing within 20 days after the mailing of notification of the permit application as required by subsection (3) or unless the department determines that the permit application is of significant impact so as to warrant a public hearing.

(2) The action taken by the department on a permit application under this part or part 13 may be appealed pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. A property owner may, after exhaustion of administrative remedies, bring appropriate legal action in a court of competent jurisdiction.

(3) The department shall post on its website, and shall have a process to provide electronic mail notification of, all of the following under this part:

- (a) A list of pending applications.
- (b) Public notices.
- (c) Public hearing schedules.

(4) A local unit of government may regulate wetland within its boundaries, by ordinance, only as provided under this part. This subsection is supplemental to the existing authority of a local unit of government. An ordinance adopted by a local unit of government pursuant to this subsection shall comply with all of the following:

(a) The ordinance shall not provide a different definition of wetland than is provided in this part, except that a wetland ordinance may regulate wetland of less than 5 acres in size.

(b) If the ordinance regulates wetland that is smaller than 2 acres in size, the ordinance shall comply with section 30309.

(c) The ordinance shall comply with sections 30308 and 30310.

(d) The ordinance shall not require a permit for uses that are authorized without a permit under section 30305, and shall otherwise comply with this part.

(5) A local unit of government that adopts an ordinance regulating wetlands under subsection (4) shall notify the department.

(6) A local unit of government that adopts an ordinance regulating wetlands shall use an application form supplied by the department, and each person applying for a permit shall make application directly to the local unit of government. Upon receipt, the local unit of government shall forward a copy of each application along with any state fees that may have been submitted under section 30306 to the department. The department shall begin reviewing the application as provided in this part. The local unit of government shall review the application pursuant to its ordinance and shall modify, approve, or deny the application within 90 days after receipt. If a local unit of government does not approve or disapprove the permit application within the time period provided by this subsection, the permit application shall be considered approved, and the local unit of government shall be considered to have made the determinations as listed in section 30311. The denial of a permit shall be accompanied by a written statement of all reasons for denial. The failure to supply complete information with a permit application may be reason for denial of a permit. If requested, the department shall inform a person whether or not a local unit of government has an ordinance regulating wetlands. If the department receives an application with respect to a wetland located in a local unit of government that has an ordinance regulating wetlands, the department immediately shall forward the application to the local unit of government, which shall modify, deny, or approve the application under this subsection. The local unit of government shall notify the department of its decision. The department shall proceed as provided in this part.

(7) If a local unit of government does not have an ordinance regulating wetlands, the department shall promptly send a copy of the permit application to the local unit of government where the wetland is located. The local unit of government may review the application; may hold a hearing on the application; may recommend approval, modification, or denial of the application to the department or may notify the department that the local unit of government declines to make a recommendation. The recommendation of the local unit of government, if any, shall be made and returned to the department within 45 days after the local unit of government's receipt of the permit application.

(8) In addition to the requirements of subsection (7), the department shall notify the local unit of government that the department has issued a permit under this part pertaining to wetland located within the jurisdiction of that local unit of government within 15 days of issuance of the permit. The department shall enclose a copy of the permit with the notice.

Sec. 30314. (1) The department shall require the holder of a permit to provide information the department reasonably requires to obtain compliance with this part.

(2) The department may enter on, upon, or through the premises on which an activity listed in section 30304 is located or on which information required to be maintained under subsection (1) is located under any of the following circumstances, as applicable:

(a) Upon obtaining a search warrant, an administrative warrant issued by the director of the department, or the consent of the person who owns or controls the premises.

(b) If there is an imminent threat to the public health or environment.

(c) Upon reasonable cause, if the wetland is a water of the United States as that term is used in section 502(7) of the federal water pollution control act, 33 USC 1362.

Sec. 30316. (1) The attorney general may commence a civil action for appropriate relief, including injunctive relief upon request of the department under section 30315(1). An action under this subsection may be brought in the circuit court for the county of Ingham or for a county in which the defendant is located, resides, or is doing business. The court has jurisdiction to restrain the violation and to require compliance with this part. In addition to any other relief granted under this section, the court may impose a civil fine of not more than \$10,000.00 per day of violation. A person who violates an order of the court is subject to a civil fine not to exceed \$10,000.00 for each day of violation.

(2) A person who violates this part is guilty of a misdemeanor punishable by a fine of not more than \$2,500.00.

(3) A person who willfully or recklessly violates a condition or limitation in a permit issued by the department under this part, or a corporate officer who has knowledge of or is responsible for a violation, is guilty of a misdemeanor punishable by a fine of not less than \$2,500.00 or more than \$25,000.00 per day of violation or by imprisonment for not more than 1 year, or both. A person who commits a violation described in this section a second or subsequent time is guilty of a felony punishable by a fine of not more than \$50,000.00 for each day of violation or by imprisonment for not more than 2 years, or both.

(4) In addition to the civil fines and penalties provided under subsections (1), (2), and (3), the court may order a person who violates this part to restore as nearly as possible the wetland that was affected by the violation to its original condition immediately before the violation. The restoration may include the removal of fill material deposited in the wetland or the replacement of soil, sand, or minerals.

(5) The award of attorney fees in a civil action under this part is subject to applicable provisions of chapter 24 of the revised judicature act of 1961, 1961 PA 235, MCL 600.2401 to 600.2461. However, regardless of whether this state's position was substantially justifiable, reasonable expert professional witness fees, as determined by the court, shall be awarded to a landowner that prevails against this state on the issue of whether the landowner's property is wetland.

Sec. 30319. (1) The department shall promulgate and enforce rules to implement this part.

(2) If a person is aggrieved by any action or inaction of the department, the person may request a formal hearing on the matter involved. The hearing shall be conducted by the department pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(3) The award of costs in a contested case under this part and the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, is subject to chapter 8 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.321 to 24.328. However, regardless of whether the department's position was substantially justifiable, reasonable expert professional witness fees, as determined by the presiding officer, shall be awarded to a landowner that prevails on the issue of whether the landowner's property is wetland.

(4) A determination, action, or inaction by the department following the hearing is subject to judicial review as provided in the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(5) This section does not limit the right of a wetland owner to institute proceedings in any circuit of the circuit court of the state against any person if necessary to protect the wetland owner's rights.

Sec. 30321. (1) The department shall make or cause to be made a preliminary inventory of all wetland in this state on a county by county basis and file the inventory with the agricultural extension office, register of deeds, and county clerk.

(2) A person who owns or leases a parcel of property may request that the department of environmental quality assess whether the parcel of property or a portion of the parcel is wetland. The request shall satisfy all of the following requirements:

(a) Be made on a form provided by the department.

(b) Be signed by the person who owns or leases the property.

(c) Contain a legal description of the parcel and, if only a portion of the parcel is to be assessed, a description of the portion to be assessed.

(d) Include a map showing the location of the parcel.

(e) Grant the department or its agent permission to enter on the parcel for the purpose of conducting the assessment.

(3) The department shall assess the parcel within a reasonable time after the request is made. The department may enter upon the parcel to conduct the assessment. Upon completion of the assessment, the department shall provide the person with a written assessment report. The assessment report shall do all of the following:

(a) Identify in detail the location of any wetland in the area assessed.

(b) If wetland is present in the area assessed, describe the types of activities that require a permit under this part.

(c) If the assessment report determines that the area assessed or part of the area assessed is not wetland, state that the department lacks jurisdiction under this part as to the area that the report determines is not wetland and that this determination is binding on the department for 3 years from the date of the assessment.

(d) Contain the date of the assessment.

(e) Advise that the person may request the department to reassess the parcel or any part of the parcel that the person believes was erroneously determined to be wetland if the request is accompanied by evidence pertaining to wetland vegetation, soils, or hydrology that is different from or in addition to the information relied upon by the department.

(f) Advise that the assessment report does not constitute a determination of wetland that may be regulated under local ordinance or wetland areas that may be regulated under federal law and advise how a determination of wetland areas regulated under federal law may be obtained.

(g) List regulatory programs that may limit land use activities on the parcel, advise that the list is not exhaustive, and advise that the assessment report does not constitute a determination of jurisdiction under those programs. The regulatory programs listed shall be those under the following parts:

(i) Part 31, with respect to floodplains and floodways.

(ii) Part 91.

(iii) Part 301.

(iv) Part 323.

(v) Part 325.

(vi) Part 353.

(4) A wetland is not contiguous to the Great Lakes or Lake St. Clair, an inland lake or pond, or a river or stream if the department determines that there is no direct physical contact and no surface water or interflowing groundwater connection to such a body of water.

(5) A person may request that, as part of an assessment, the department make a determination whether a wetland is contiguous to the Great Lakes, Lake St. Clair, an inland lake or pond, or a stream. The department shall make the determination in writing within 30 days after an on-site evaluation. As used in this subsection, "pond" does not include a farm or stock pond constructed consistent with the exemption under section 30305(2)(g).

(6) The department shall not consider an agricultural drain, as defined in section 30305, in determining whether a wetland is contiguous to the Great Lakes or Lake St. Clair, an inland lake or pond, or a river or stream.

(7) A drainage structure such as a culvert, ditch, or channel, in and of itself, is not a wetland. A temporary obstruction of drainage, in and of itself, is not a wetland until the presence of water is of sufficient frequency and duration to be identified as wetland pursuant to section 30301(4).

(8) A person may request the department to reassess any area assessed under subsections (2) and (3) that the person believes the department erroneously determined to be wetland. The requirements of subsections (2) and (3) apply to the request, assessment, and assessment report. However, the request shall be accompanied by evidence pertaining to wetland vegetation, soils, or hydrology that is different from or in addition to the information relied upon by the department. The assessment report shall not contain the information required by subsection (3)(e).

(9) If an assessment report determines that the area assessed or part of the area assessed is not a wetland regulated by the department under this part, then the area determined by the assessment report not to be a wetland is not a wetland regulated by the department under this part for a period of 3 years after the date of the assessment.

(10) The department may charge a fee for an assessment requested under subsection (2) based upon the cost to the department of conducting an assessment.

(11) There shall be no fee for an assessment under the blueberry production assistance program.

(12) The department shall, upon request of the applicant and without charge, provide to the applicant a copy of any delineation forms completed by the department associated with a permit application.

Sec. 32301. As used in this part:

(a) "Connecting waterway" means the St. Marys river, Detroit river, St. Clair river, or Lake St. Clair.

(b) "Environmental area" means an area of the shoreland determined by the department on the basis of studies and surveys to be necessary for the preservation and maintenance of fish and wildlife.

(c) "High-risk area" means an area of the shoreland that is determined by the department on the basis of studies and surveys to be subject to erosion.

(d) "Land to be zoned or regulated" or "land to be zoned" means the land in this state that borders or is adjacent to a Great Lake or a connecting waterway and that, except for flood risk areas, is situated within 1,000 feet landward from the ordinary high-water mark as defined in section 32501, land bordering or adjacent to waters affected by levels of the Great Lakes landward of the ordinary high-water mark as defined by section 30101, and land between the ordinary high-water mark and the water's edge.

(e) "Shoreland" means the land, water, and land beneath the water that is in close proximity to the shoreline of a Great Lake or a connecting waterway.

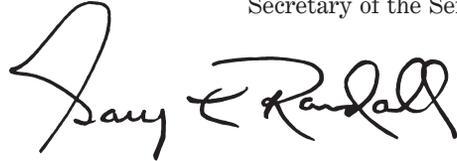
(f) "Shoreline" means that area of the shorelands where land and water meet.

(g) "Flood risk area" means the area of the shoreland that is determined by the department on the basis of studies and surveys to be subject to flooding from effects of levels of the Great Lakes and is not limited to 1,000 feet.

Enacting section 1. This amendatory act takes effect 90 days after the date it is enacted into law.



Secretary of the Senate



Clerk of the House of Representatives

Approved

.....
Governor