

HOUSE BILL No. 5958

April 25, 2002, Introduced by Rep. DeVuyst and referred to the Committee on Conservation and Outdoor Recreation.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 8313, 8314, 8327, 8329, 8333, and 30113 (MCL 324.8313, 324.8314, 324.8327, 324.8329, 324.8333, and 324.30113), section 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 ANY ORGANISM, INCLUDING, BUT NOT LIMITED TO, AQUATIC VEGETATION, 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.

1 (B) "AQUATIC VEGETATION" MEANS ALGAE AND HIGHER AQUATIC
2 PLANTS.

3 (C) "AREA OF IMPACT" MEANS THE AREA WITHIN A WATERBODY WHERE
4 AN AQUATIC NUISANCE MAY BE AFFECTED BY CONTROL WORK.

5 (D) "CONTROL WORK" MEANS THE APPLICATION OF A PESTICIDE TO A
6 WATERBODY.

7 (E) "DECLARATION OF INTENT" MEANS THE NOTICE PROVIDED FOR
8 UNDER SECTION 3305(1).

9 (F) "DEPARTMENT" MEANS THE DEPARTMENT OF ENVIRONMENTAL
10 QUALITY.

11 (G) "EMERGENCY NOTIFICATION PROCEDURE" MEANS A
12 DEPARTMENT-APPROVED PROCEDURE SUBMITTED ANNUALLY BY A COMMERCIAL
13 APPLICATOR THAT PROVIDES A DESCRIPTION OF ALL AVAILABLE MEANS OF
14 CONTACT, SUCH AS HOME TELEPHONE NUMBER, BUSINESS TELEPHONE
15 NUMBER, MOBILE TELEPHONE NUMBER, OR PAGER NUMBER.

16 (H) "HIGHER AQUATIC PLANT" MEANS ANY OF A GROUP OF VASCULA-
17 RIZED PLANTS THAT HAVE TRUE STEMS, FLOWERS, LEAVES, AND ROOTS AND
18 THAT LIVE IN WATER.

19 (I) "LITTORAL ZONE" MEANS THE AREA OF A WATERBODY FROM THE
20 WATER'S EDGE TO THE LIMIT OF THE DEPTH OF LIGHT PENETRATION WHERE
21 ROOTED AQUATIC VEGETATION TYPICALLY GROWS.

22 (J) "OUTLET" MEANS ANY NATURAL OR ARTIFICIALLY CREATED
23 WATERCOURSE OR STRUCTURE THAT ALLOWS PASSAGE OF WATER OUT OF A
24 WATERBODY INTO OTHER SURFACE WATERS OF THE STATE, IN AN INTERMIT-
25 TENT OR CONTINUOUS FLOW.

1 (K) "PESTICIDE" MEANS A SUBSTANCE OR MIXTURE OF SUBSTANCES
2 INTENDED FOR PREVENTING, DESTROYING, REPELLING, OR MITIGATING
3 AQUATIC NUISANCES.

4 (L) "SWIMMER'S ITCH" MEANS THE INFLAMMATION OF A SWIMMER'S
5 SKIN RESULTING FROM AN ALLERGIC REACTION TO THE PENETRATION OF
6 THE SKIN BY THE IMMATURE STAGES OF BLOOD FLUKE PARASITES THAT
7 LIVE A PART OF THEIR LIFE CYCLE IN CERTAIN AQUATIC SNAILS.

8 (M) "WATERS OF THE STATE" OR "WATERBODY" MEANS GROUNDWATERS,
9 LAKES, PONDS, RIVERS, STREAMS, AND WETLANDS AND ALL OTHER WATER-
10 COURSES AND WATERS WITHIN THE JURISDICTION OF THIS STATE AND ALSO
11 THE GREAT LAKES BORDERING THIS STATE.

12 SEC. 3303. (1) THE APPLICATION OF PESTICIDES IN POWDER,
13 CRYSTAL, OR SOLUTION FORM TO THE WATERS OF THE STATE FOR THE CON-
14 TROL OF AQUATIC NUISANCES IS LAWFUL AND NOT IN CONTRAVENTION OF
15 THE PRIVATE OR PUBLIC RIGHTS TO THE USE AND ENJOYMENT OF ABUTTING
16 PROPERTY BY THE OWNERS OR OCCUPANTS OF THAT PROPERTY IF THE
17 APPLICATION IS MADE IN COMPLIANCE WITH THIS PART, PART 83, AND
18 RULES PROMULGATED UNDER THIS PART OR PART 83.

19 (2) CONTROL WORK MAY BE UNDERTAKEN BY THIS STATE OR A POLIT-
20 ICAL SUBDIVISION OF THIS STATE, BY AN ORGANIZED LAKE OR IMPROVE-
21 MENT ASSOCIATION ON BEHALF OF ITS MEMBERS, OR BY THE OWNER OF
22 PROPERTY ABUTTING THE AFFECTED WATERBODY. HOWEVER, THE CONTROL
23 WORK SHALL ACTUALLY BE PERFORMED BY AN AQUATIC PEST CONTROL
24 APPLICATOR LICENSED UNDER PART 83.

25 SEC. 3305. (1) NOT LESS THAN 10 DAYS BEFORE PERFORMING CON-
26 TROL WORK, A PERSON SHALL SUBMIT A DECLARATION OF INTENT TO THE
27 DEPARTMENT ON A FORM PROVIDED BY THE DEPARTMENT. THE DECLARATION

1 OF INTENT SHALL BE ACCOMPANIED BY A FEE AS REQUIRED UNDER
2 SECTION 3309.

3 (2) THE DECLARATION OF INTENT SHALL INCLUDE ALL OF THE FOL-
4 LOWING INFORMATION:

5 (A) THE ACTIVE INGREDIENT OR TRADE NAME AND PROPOSED APPLI-
6 CATION RATE FOR EACH PESTICIDE PROPOSED FOR USE.

7 (B) A MAP OR MAPS OF THE WATERBODY TO WHICH THE PESTICIDE
8 WILL BE APPLIED. THE MAP OR MAPS SHALL CLEARLY DELINEATE THE
9 PROPOSED AREA OR AREAS OF IMPACT FOR EACH CHEMICAL TYPE.

10 (C) THE NAME, ADDRESS OR LOT NUMBER, AND TELEPHONE NUMBER
11 FOR ALL BOTTOMLAND OWNERS WHOSE PROPERTY IS IN THE PROPOSED AREA
12 OF IMPACT, EXCEPT AS FOLLOWS:

13 (i) IF THE PROPOSED AREA OF IMPACT IS TO INVOLVE THE PROP-
14 ERTY OF 5 OR MORE BOTTOMLAND OWNERS, CONTACT INFORMATION IS
15 REQUIRED FOR 5 BOTTOMLAND OWNERS WHO WILL KNOW THE DATE OF TREAT-
16 MENT, THE CHEMICALS USED, AND THE AREA OR AREAS OF IMPACT FOR
17 EACH CHEMICAL TREATMENT.

18 (ii) IF AN APPLICANT HAS AN EMERGENCY NOTIFICATION PROCE-
19 DURE, CONTACT INFORMATION IS REQUIRED FOR 1 PERSON WHO WILL KNOW
20 THE DATE OF TREATMENT, THE CHEMICALS USED, AND THE AREA OR AREAS
21 OF IMPACT FOR EACH CHEMICAL TREATMENT.

22 (iii) IF THE PERSON WHO HAS CONTRACTED FOR THE CONTROL WORK
23 HAS AN EMERGENCY NOTIFICATION PROCEDURE, THE APPLICANT SHALL
24 IDENTIFY THE PERSON AND PROVIDE A COPY OF THE CONTRACT OR AUTHO-
25 RIZATION FORM.

26 (3) THE DECLARATION OF INTENT SHALL INCLUDE A LAKE
27 MANAGEMENT PLAN IF THE AREA OF IMPACT IS AN ENTIRE LAKE. A LAKE

1 MANAGEMENT PLAN SHALL BE SUBMITTED ON A FORM PROVIDED BY THE
2 DEPARTMENT AND SHALL INCLUDE, AT A MINIMUM, ALL OF THE
3 FOLLOWING:

4 (A) ALL OF THE FOLLOWING PHYSICAL CHARACTERISTICS OF THE
5 WATERBODY:

6 (i) LOCATION.

7 (ii) LAKE SIZE.

8 (iii) APPROXIMATE MAXIMUM DEPTH.

9 (iv) APPROXIMATE MEAN DEPTH.

10 (v) THE APPROXIMATE SIZE OF THE LITTORAL ZONE, OR A BATHY-
11 METRIC MAP.

12 (vi) A MAP OF THE APPLICATION AREA, INCLUDING ALL OF THE
13 FOLLOWING:

14 (A) TRIBUTARIES.

15 (B) OUTLETS.

16 (C) WETLANDS.

17 (D) WATER CONTROL STRUCTURES.

18 (vii) WHETHER THE LAKE HAS PUBLIC OR PRIVATE ACCESS SITES.

19 (B) ALL OF THE FOLLOWING BIOLOGICAL CHARACTERISTICS OF THE
20 WATERBODY:

21 (i) AN AQUATIC VEGETATION MAP OR MAPS SHOWING THE MAXIMUM
22 ANNUAL DISTRIBUTION OF MAJOR NONTARGET SPECIES.

23 (ii) A DESCRIPTION OF THE FISH HABITAT.

24 (iii) A DESCRIPTION OF PLANT COMMUNITIES, INCLUDING IDENTI-
25 FICATION OF ANY SPECIAL CONCERN.

1 (iv) AN INDICATION OF THREATENED OR ENDANGERED SPECIES
2 APPEARING ON A LIST IDENTIFIED IN SECTION 36505 THAT MAY BE
3 PRESENT AT THE TIME OF APPLICATION.

4 (C) A VEGETATION MANAGEMENT PLAN THAT INCLUDES A BRIEF
5 DESCRIPTION OF THE AQUATIC NUISANCE PROBLEM, MANAGEMENT GOALS,
6 AND PROPOSED ACTIONS NECESSARY TO ATTAIN THE MANAGEMENT GOALS.

7 (4) AFTER SUBMITTING A DECLARATION OF INTENT UNDER
8 SUBSECTION (1), A PERSON MAY AMEND THE DECLARATION OF INTENT BY
9 SUBMITTING THE AMENDMENT TO THE DEPARTMENT IN WRITING.

10 SEC. 3307. BEGINNING 10 DAYS AFTER A PERSON SUBMITS A DEC-
11 LARATION OF INTENT OR 24 HOURS AFTER THE DEPARTMENT RECEIVES AN
12 AMENDMENT TO A DECLARATION OF INTENT UNDER SECTION 3305, WHICH-
13 EVER PERIOD EXPIRES LAST, A PERSON MAY PROCEED WITH THE CONTROL
14 WORK AS DESCRIBED IN THE DECLARATION OF INTENT UNLESS THE DIREC-
15 TOR OF THE DEPARTMENT ISSUES AN ORDER PROHIBITING THE CONTROL
16 WORK OR IMPOSING CONDITIONS ON THE CONTROL WORK. THE DIRECTOR OF
17 THE DEPARTMENT MAY ISSUE SUCH AN ORDER FOR EITHER OF THE FOLLOW-
18 ING CAUSES:

19 (A) THE USE OF A PESTICIDE, ALTHOUGH OTHERWISE IN ACCORDANCE
20 WITH THE LABEL AND RULES IS LIKELY, BY ITSELF OR IN COMBINATION
21 WITH OTHER AQUATIC MANAGEMENT ACTIVITIES, TO RESULT IN ECONOMIC
22 LOSS, RECREATIONAL DAMAGE, OR A PUBLIC HEALTH HAZARD, OR TO FAIL
23 TO PROVIDE CONTROL OF THE AQUATIC NUISANCE.

24 (B) MISREPRESENTATION OR FAILURE TO FULLY DISCLOSE RELEVANT
25 FACTS IN THE DECLARATION OF INTENT AS REQUIRED UNDER
26 SECTION 3305.

1 SEC. 3309. (1) A DECLARATION OF INTENT SHALL BE ACCOMPANIED
2 BY A FEE OF \$100.00 IF THE AREA OF IMPACT IS GREATER THAN 1
3 ACRE.

4 (2) THE DEPARTMENT SHALL FORWARD FEES COLLECTED UNDER THIS
5 SECTION TO THE STATE TREASURER FOR DEPOSIT IN THE LAND AND WATER
6 MANAGEMENT PERMIT FEE FUND CREATED IN SECTION 30113.

7 SEC. 3311. (1) THE PERSON PERFORMING CONTROL WORK SHALL
8 ALLOW REPRESENTATIVES OF THE DEPARTMENT TO COLLECT A SAMPLE OF
9 THE PESTICIDE USED, BEFORE OR DURING THE PERFORMANCE OF THE CON-
10 TROL WORK, AS DETERMINED BY THE DEPARTMENT. THE SAMPLE SHALL NOT
11 BE A LARGER QUANTITY THAN IS REQUIRED FOR ANALYSIS.

12 (2) THE DEPARTMENT SHALL CONDUCT SPOT CHECKS TO MONITOR COM-
13 PLIANCE WITH THIS PART AND RULES PROMULGATED UNDER THIS PART.

14 SEC. 3313. A PERSON SHALL NOT KNOWINGLY GIVE FALSE INFORMA-
15 TION IN A MATTER PERTAINING TO THIS PART, OR KNOWINGLY RESIST,
16 IMPEDE, OR HINDER THE REPRESENTATIVE OF THE DEPARTMENT IN THE
17 DISCHARGE OF HIS OR HER DUTIES UNDER THIS PART.

18 SEC. 3315. SECTIONS 8313, 8314, 8327, 8329, AND 8333 TO
19 8335 APPLY TO A VIOLATION OF THIS PART OR A RULE PROMULGATED
20 UNDER THIS PART, AS PROVIDED IN THOSE SECTIONS.

21 SEC. 3317. A PERSON AGGRIEVED BY AN ORDER ISSUED PURSUANT
22 TO SECTION 3307, OR PURSUANT TO SECTION 8329 AS IT RELATES TO
23 THIS PART, MAY REQUEST A CONTESTED CASE HEARING PURSUANT TO THE
24 ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.201 TO
25 24.328.

26 SEC. 3319. (1) TO AVOID UNREASONABLE ADVERSE EFFECTS ON THE
27 ENVIRONMENT OR PUBLIC HEALTH, THE DEPARTMENT MAY PROMULGATE RULES

1 PRESCRIBING THE TYPE OF PESTICIDES TO BE USED FOR CONTROL WORK,
2 THE TYPE OF SOLUTIONS TO BE USED, THE MANNER OF APPLYING THE PES-
3 TICIDES, AND THE TIME OF APPLICATION.

4 (2) THE DEPARTMENT MAY PROMULGATE RULES PRESCRIBING PROCE-
5 DURES FOR PUBLIC NOTICE OF CONTROL WORK.

6 Sec. 8313. (1) A commercial applicator who advertises in
7 any form or who holds himself or herself out to the public as
8 being in the business of applying either general use or
9 restricted use pesticides shall obtain a commercial applicator
10 license for each place of business and shall comply with the
11 requirements of this section before engaging in business.

12 (2) A commercial applicator required to be licensed by sub-
13 section (1) shall be certified under section 8312 and shall have
14 at least 1 of the following in order to qualify for a license
15 under this section:

16 (a) Service for not less than 2 years as an employee of 1 or
17 more commercial applicators, or ~~a person with~~ comparable
18 experience as determined by the director, during which period the
19 employee receives training and obtains experience in the applica-
20 tion of pesticides under the supervision of a commercial
21 applicator.

22 (b) A baccalaureate degree from a recognized college or uni-
23 versity in a discipline that provides education regarding pests
24 and the control of pests and 1 year of service as an employee of
25 1 or more commercial applicators, or ~~a person with~~ comparable
26 experience as determined by the director, during which period the
27 employee receives training and obtains experience in the

1 application of pesticides under the supervision of a commercial
2 applicator.

3 (c) A commercial applicator license issued under former ~~Act~~
4 ~~No. 171 of the Public Acts of 1976~~ 1976 PA 171 before
5 December 27, 1988.

6 (3) An application for a commercial applicator license shall
7 be on a form provided by the director and shall contain informa-
8 tion regarding the applicant's qualifications and proposed opera-
9 tions, the type of equipment to be used by the applicant, and
10 other information considered pertinent by the director.

11 (4) An application for a commercial applicator license shall
12 be accompanied by the appropriate fee as provided in section
13 8317(2).

14 (5) An application for a commercial applicator license shall
15 be accompanied by proof of sufficient financial responsibility as
16 prescribed by rule.

17 (6) A commercial applicator license may restrict the appli-
18 cant to use a certain type of equipment or pesticide if the
19 director finds that the applicant is qualified to use only that
20 type.

21 (7) The director may refuse to issue or renew a commercial
22 applicator license if the applicant demonstrates an insufficient
23 knowledge of an item called for in the application, or has unsat-
24 isfied judgments against him or her, or if the equipment to be
25 used by the applicant is unsafe or inadequate to accomplish the
26 proper application of the pesticides to be used.

1 (8) If an applicant is not issued a commercial applicator
2 license under this section, the director shall inform the
3 applicant in writing of the reasons why the license was not
4 issued.

5 (9) The director may at any time deny, revoke, or suspend a
6 commercial applicator license for a violation of this part, ~~or~~
7 a violation of an order issued under this part, OR A VIOLATION OF
8 PART 33 or upon conviction under this part, PART 33, FIFRA, or a
9 state pesticide law of a reciprocating state in accordance with
10 section 8320.

11 Sec. 8314. (1) ~~Commencing 3 months after promulgation of~~
12 ~~the rules required under former section 19 of Act No. 171 of the~~
13 ~~Public Acts of 1976, currently section 8325, it~~ IT is a viola-
14 tion of this part for a person to apply any pesticide for a com-
15 mercial purpose or to apply any pesticide in the course of his or
16 her employment for any purpose other than a private agricultural
17 purpose unless that person is either a certified applicator or a
18 registered applicator.

19 (2) A person who is not subject to the licensing requirement
20 in section 8313 may apply a general use ready-to-use pesticide
21 without being a certified applicator or a registered applicator.

22 (3) To be eligible to be a registered applicator, an appli-
23 cant shall do all of the following:

24 (a) Complete a training program that has been approved by
25 the director and is conducted by a trainer who has the minimum
26 qualifications established by rule. Registration requirements
27 for applicators who apply pesticides only for private

1 agricultural purposes may provide optional methods of training
2 and testing as provided in section 8311(1). The training program
3 shall be designed to facilitate and encourage persons who apply
4 pesticides for private agricultural purposes to become registered
5 applicators.

6 (b) Pass a test that is approved by the director and is
7 administered by the director's designee.

8 (c) Possess either a valid temporary registration certifi-
9 cate issued by the director's designee under subsection ~~-(3)-~~ (4)
10 or a valid registration card issued by the director.

11 (4) If an applicant successfully completes an approved
12 training program and passes a test that is administered by the
13 director's designee as a requirement of that training program, a
14 trainer shall issue a temporary registration to an applicant. A
15 temporary registration is only valid from the time it is issued
16 until the applicant receives a registration card from the
17 director. An applicant may receive a valid registration card
18 upon payment of the fee provided for in section 8317(3) and when
19 the director's designee submits to the director a program comple-
20 tion form that is signed and dated by the trainer and by the
21 applicant stating that the required training program has been
22 provided and received and indicating that the applicant has
23 passed the required test. The program completion form shall be
24 promptly submitted as soon as the director's designee issues a
25 temporary registration.

26 (5) A registered applicator may apply a pesticide that is
27 not a restricted use pesticide under the supervision of a

1 certified applicator and may apply a restricted use pesticide
2 when under the direct supervision of a certified applicator. In
3 addition, during a registered applicator's initial 3-year regis-
4 tration, a registered applicator may apply categories of
5 restricted use pesticides while not directly supervised after the
6 registered applicator has applied that category of restricted use
7 pesticide under direct supervision for the number of hours
8 required by the director unless prohibited by a label.

9 (6) A registered applicator who applies general use pesti-
10 cides only for a private agricultural purpose or is not employed
11 by a commercial applicator and who applies general use pesticides
12 as a scheduled and required work assignment in the course of his
13 or her employment is exempt from the provisions of this part
14 requiring supervision by a certified applicator when that regis-
15 tered applicator applies general use pesticides.

16 (7) The employer of a registered applicator shall maintain a
17 record of the hours and location of directly supervised ~~hours~~
18 ~~of~~ application of a restricted use pesticide by each registered
19 applicator for the duration of the restricted applicator's
20 employment and for 3 years following the termination of that
21 person's employment. In addition, ~~when~~ IF a registered appli-
22 cator has applied a category of restricted use pesticides while
23 directly supervised for the length of time required by the direc-
24 tor, the employer of the applicator may notify the director.
25 Upon notification, the director shall forward a sticker or symbol
26 to the employer that shall be attached to the registered
27 applicator's registration card.

1 (8) A registered applicator who is applying any pesticide
2 shall display his or her registration card upon the request of an
3 employee of the department.

4 (9) A registered applicator shall complete a refresher
5 training program every 3 years to be eligible to renew his or her
6 registration.

7 (10) The director may at any time deny, revoke, or suspend a
8 certification or registration for a violation of this part, ~~or~~
9 a violation of an order issued under this part, OR A VIOLATION OF
10 PART 33 or upon conviction under this part, PART 33, FIFRA, or a
11 state pesticide law of a reciprocating state in accordance with
12 section 8320.

13 (11) The director shall develop and provide the documents
14 and forms necessary to implement this section.

15 Sec. 8327. (1) ~~When~~ IF the director believes that an
16 applicator is using or intending to use a pesticide in an unsafe
17 or inadequate manner, ~~or~~ in a manner inconsistent with its
18 labeling, OR IN VIOLATION OF PART 33 OR A RULE PROMULGATED UNDER
19 PART 33, the director shall order the applicator to cease the use
20 of or refrain from the intended use of the pesticide. The order
21 may be either oral or written and shall inform the applicator of
22 the reason for the order.

23 (2) Upon receipt of the order, the applicator shall immedi-
24 ately comply with the order. Failure to comply constitutes cause
25 for revocation of the applicator's license or certification and
26 subjects the applicator to the penalty imposed under section
27 ~~8332~~ 8333.

1 (3) The director shall rescind the order immediately upon
2 being satisfied after inspection that the order has been complied
3 with. The inspection shall be conducted as soon as possible at
4 the oral or written request of the applicator. The rescinding
5 order of the director may be oral, and the applicator may rely on
6 that oral rescinding order. However, an oral order shall be fol-
7 lowed by a written rescinding order.

8 (4) If sampling or examination of a pesticide or device dis-
9 closes that it fails to comply with this part or the rules
10 promulgated under this part, then the pesticide or device is in
11 violation of this part.

12 Sec. 8329. (1) When the director has reasonable cause to
13 believe a pesticide or device is being distributed, stored,
14 transported, offered for sale, or used in violation of this part
15 or the rules promulgated under this part OR PART 33 OR A RULE
16 PROMULGATED UNDER PART 33, the director may issue a written order
17 to the owner or custodian of the pesticide or device to stop the
18 prohibited conduct. After receipt of such an order, a person
19 shall not sell, use, or remove the pesticide or device described
20 in the order except in accordance with the order.

21 (2) A pesticide or device that is being transported, was
22 transported and remains unsold or is in original unbroken pack-
23 ages, is sold or offered for sale in this state, or is imported
24 from a foreign country, in violation of this part or the rules
25 promulgated under this part, is liable to be proceeded against in
26 any district court in the district where it is found and seized
27 for confiscation by a process in rem for condemnation if:

1 (a) In the case of a pesticide, any of the following
2 circumstances exist:

3 (i) It is adulterated or misbranded.

4 (ii) It is not registered pursuant to this part.

5 (iii) Its labeling fails to bear the information required by
6 FIFRA or by regulations promulgated under FIFRA.

7 (iv) It is not colored or discolored and coloring or discol-
8 oring is required under FIFRA.

9 (v) Any of the claims made for it or any of the directions
10 for its use differ in substance from the representations made in
11 connection with its registration.

12 (b) In the case of a device, it is misbranded.

13 (c) In the case of a pesticide or device, when used in
14 accordance with the requirements imposed under this part and as
15 directed by the labeling, it nevertheless causes unreasonable
16 adverse effects on the environment. However, when a plant regu-
17 lator, defoliant, or desiccant is used in accordance with the
18 label claims and recommendations, physical or physiological
19 effects on plants or parts of plants are not considered to be
20 injurious if those effects are the purpose for which the plant
21 regulator, defoliant, or desiccant was applied.

22 (3) If the pesticide or device is condemned it shall, after
23 entry of the decree, be disposed of by destruction or sale as the
24 court directs, and, if the pesticide or device is sold, the pro-
25 ceeds less the court costs shall be credited to the general
26 fund. However, the pesticide or device shall not be sold
27 contrary to this part or the laws of the jurisdiction in which it

1 is sold. However, upon payment of the costs of the condemnation
2 proceedings and the execution and delivery of a good and suffi-
3 cient bond conditioned that the pesticide or device shall not be
4 sold or otherwise disposed of contrary to this part or the laws
5 of the jurisdiction in which it is sold, the court may direct
6 that the pesticide or device be delivered to the owner. The pro-
7 ceedings of condemnation cases shall conform as nearly as possi-
8 ble to proceedings in admiralty, except that either party may
9 demand trial by jury of an issue of fact joined in a case, and
10 the proceedings shall be brought by and in the name of the people
11 of the state.

12 (4) If a decree of condemnation is entered against a pesti-
13 cide or device, court costs and fees, storage, and other proper
14 expenses shall be awarded against the person, if any, intervening
15 as claimant of the pesticide or device.

16 Sec. 8333. (1) The director, upon finding after notice and
17 an opportunity for a hearing that a person has violated any pro-
18 vision of this part, except sections 8311(2) and 8312, OR PART 33
19 OR A RULE PROMULGATED UNDER PART 33, may impose an administrative
20 fine of not more than \$1,000.00 for each violation.

21 (2) If the director finds that a violation occurred despite
22 the exercise of due care or did not result in significant harm to
23 human health or the environment, the director may issue a warning
24 instead of imposing an administrative fine.

25 (3) The director shall advise the attorney general of the
26 failure of a person to pay an administrative fine imposed under

1 this section. The attorney general shall bring an action in a
2 court of competent jurisdiction to recover the fine.

3 (4) A registrant, commercial applicator, registered applica-
4 tor, restricted use pesticide dealer, or distributor who know-
5 ingly violates this part or a rule promulgated under this part OR
6 PART 33 OR A RULE PROMULGATED UNDER PART 33 is guilty of a misde-
7 meanor and shall be fined not more than \$5,000.00 for each
8 offense. A registrant, commercial applicator, registered appli-
9 cator, restricted use pesticide dealer, or distributor who know-
10 ingly and with malicious intent violates this part or a rule
11 promulgated under this part OR PART 33 OR A RULE PROMULGATED
12 UNDER PART 33 is guilty of a misdemeanor, and shall be fined not
13 more than \$25,000.00 for each offense. A private agricultural
14 applicator or any other person who knowingly violates this part
15 or a rule promulgated under this part OR PART 33 OR A RULE
16 PROMULGATED UNDER PART 33 is guilty of a misdemeanor and shall be
17 fined not more than \$1,000.00 for each offense. The court may
18 allow the department to recover reasonable costs and attorney
19 fees incurred in a prosecution resulting in a conviction for a
20 violation committed knowingly and with malicious intent under
21 this subsection.

22 (5) The director may bring an action to enjoin the violation
23 or threatened violation of this part or a rule promulgated under
24 this part OR PART 33 OR A RULE PROMULGATED UNDER PART 33 in a
25 court of competent jurisdiction of the county in which the viola-
26 tion occurs or is about to occur.

1 (6) The attorney general may file a civil action in which
2 the court may impose on any person who violates this part or a
3 rule promulgated under this part OR PART 33 OR A RULE PROMULGATED
4 UNDER PART 33 a civil fine of not more than \$5,000.00 for each
5 violation.

6 (7) In defense of an action filed under this section, in
7 addition to any other lawful defense, a person may present evi-
8 dence as an affirmative defense that, at the time of the alleged
9 violation, he or she was in compliance with label directions and
10 with this part and rules promulgated under this part OR PART 33
11 OR A RULE PROMULGATED UNDER PART 33.

12 (8) A civil cause of action does not arise for injuries to
13 any person or property if a private agricultural applicator, or a
14 registered applicator who stores, handles, or applies pesticides
15 only for a private agricultural purpose, was not grossly negli-
16 gent and stored, handled, or applied pesticides in compliance
17 with this part, rules promulgated under this part, and the pesti-
18 cide labeling.

19 (9) Applicable provisions of the revised judicature act of
20 1961, ~~Act No. 236 of the Public Acts of 1961, being sections~~
21 ~~600.101 to 600.9947 of the Michigan Compiled Laws~~ 1961 PA 236,
22 MCL 600.101 TO 600.9948, apply to civil actions filed ~~pursuant~~
23 ~~to~~ UNDER this part.

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

26 (2) The state treasurer may receive money or other assets
27 from any source for deposit into the fund. The state treasurer

1 shall direct the investment of the fund. The state treasurer
2 shall credit to the fund interest and earnings from fund
3 investments. The state treasurer shall annually present to the
4 department an accounting of the amount of money in the fund.

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

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

9 (a) Sections 3104, 3107, and 3108.

10 ~~(b) Part 325.~~

11 ~~(c) Part 303.~~

12 ~~(d) Section 12562 of the public health code, Act No. 368 of~~
13 ~~the Public Acts of 1978, being section 333.12562 of the Michigan~~
14 ~~Compiled Laws.~~

15 (B) PART 33.

16 (C) PART 303.

17 (D) PART 315.

18 (e) Part 323.

19 (F) PART 325.

20 (G) PART 353.

21 (H) ~~(f) Section 117 of the subdivision control act of~~
22 ~~1967, Act No. 288 of the Public Acts of 1967, being~~
23 ~~section 560.117 of the Michigan Compiled Laws~~ LAND DIVISION ACT,
24 1967 PA 288, MCL 560.117.

25 ~~(g) Part 315.~~

26 ~~(h) Part 353.~~

1 (5) The department shall process permit applications for
2 ~~the~~ THOSE acts and parts of acts cited in subsection (4) UNDER
3 WHICH PERMITS ARE ISSUED within 60 days after receiving a com-
4 pleted permit application unless the act or part specifically
5 provides for permit application processing time limits.

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

8 (a) How money in the fund was expended during the previous
9 fiscal year.

10 (b) For permit programs funded with money in the fund, the
11 average length of time for department action on permit applica-
12 tions for each class of permits reviewed.

13 Enacting section 1. Sections 12561, 12562, and 12563 of the
14 public health code, 1978 PA 368, MCL 333.12561, 333.12562, and
15 333.12563, are repealed.

16 Enacting section 2. This amendatory act takes effect
17 January 1, 2003.