

# HOUSE BILL No. 5152

October 9, 2003, Introduced by Reps. Law, Gleason, Meisner, Hopgood, Bieda, Farrah, Tobocman, Phillips, Jamnick, Gielegthem, O'Neil and Hunter and referred to the Committee on Government Operations.

A bill to amend 1994 PA 451, entitled  
"Natural resources and environmental protection act,"  
by amending sections 3105, 3111, and 3115 (MCL 324.3105,  
324.3111, and 324.3115).

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 3105. (1) The department shall conduct an on-site  
2 inspection of each facility that has received a permit under this  
3 part to discharge into the waters of the state. The inspection  
4 shall determine whether the discharge is in compliance with the  
5 permit.

6       (2) ~~The~~ In addition to the inspection under subsection  
7 (1), the department may enter at all reasonable times in or upon  
8 any private or public property for the purpose of inspecting and  
9 investigating conditions relating to the pollution of any waters  
10 of the state and the obstruction of the floodways of the rivers

1 and streams of this state. The department may call upon any  
2 officer, board, department, school, university, or other state  
3 institution and the officers or employees thereof for any  
4 assistance considered necessary to implement this part.

5       Sec. 3111. (1) A person doing business within this state  
6 who discharges **wastewater** to the waters of the state or to any  
7 sewer system ~~wastewater that contains wastes in addition to~~  
8 ~~sanitary sewage~~ shall file ~~an annual report~~ **monthly reports** on  
9 ~~a form~~ **forms** provided by the department. The ~~report~~ **reports**  
10 described in this section shall set forth the nature of the  
11 enterprise, indicating the quantities of materials used in and  
12 incidental to its manufacturing processes and including  
13 by-products and waste products that appear on a register of  
14 critical materials compiled by the department and the estimated  
15 annual total number of gallons of wastewater, including, but not  
16 limited to, process and cooling water to be discharged to the  
17 waters of the state or to any sewer system.

18       (2) In addition to the reports filed under subsection (1), a  
19 person shall report any discharge to the waters of the state or  
20 to any sewer system of a substance not authorized in his or her  
21 permit or a substance authorized in his or her permit but in an  
22 amount or concentration higher than authorized in the permit,  
23 that may pose a threat to public health, safety, welfare, or to  
24 the environment. The person shall report the discharge to the  
25 department within 2 hours of the beginning of the discharge.

26       (3) The information collected under subsections (1) and (2)  
27 shall be used by the department only for purposes of water

1 pollution control. The department shall provide proper and  
2 adequate facilities and procedures to safeguard the  
3 confidentiality of manufacturing proprietary processes, except  
4 that confidentiality shall not extend to waste products  
5 discharged to the waters of the state. ~~Operations~~

6 (4) Subject to subsection (3), the department shall make  
7 information collected under subsections (1) and (2) available to  
8 the public.

9 (5) Subject to section 3115, a person who fails to file a  
10 monthly report containing the information required by this  
11 section is subject to a state civil infraction and shall be  
12 ordered to pay a civil fine of \$100.00 for each day that a report  
13 containing the information required by this section has not been  
14 submitted. In addition, operations of a business or industry  
15 that violate this section may be enjoined by an action commenced  
16 by the attorney general in a court of competent jurisdiction.

17 (6) The department shall promulgate rules as it considers  
18 necessary to ~~effectuate the administration of~~ **implement** this  
19 section. ~~—, including, where necessary to meet special~~  
20 ~~circumstances, reporting more frequently than annually.~~

21 Sec. 3115. (1) The department may request the attorney  
22 general to commence a civil action for appropriate relief,  
23 including a permanent or temporary injunction, for a violation of  
24 this part or a provision of a permit, order, rule, or stipulation  
25 of the department. An action under this subsection may be  
26 brought in the circuit court for the county of Ingham or for the  
27 county in which the defendant is located, resides, or is doing

1 business. The court has jurisdiction to restrain the violation  
2 and to require compliance. In addition to any other relief  
3 granted under this subsection, the court shall impose a civil  
4 fine of not less than \$2,500.00 and may award reasonable attorney  
5 fees and costs to the prevailing party. However, ~~the~~ **for a**  
6 **serious violation, the fine shall be not less than \$5,000.00 and**  
7 **for a significant noncomplier violation, the fine shall be not**  
8 **less than \$10,000.00.** The maximum fine imposed by the court  
9 **under this subsection** shall be not more than ~~\$25,000.00~~  
10 **\$50,000.00** per day of violation.

11 (2) A person who at the time of the violation knew or should  
12 have known that he or she discharged a substance contrary to this  
13 part, or contrary to a permit, order, rule, or stipulation of the  
14 department, or who intentionally makes a false statement,  
15 representation, or certification in an application for or **on a**  
16 form pertaining to a permit or in a notice or report required by  
17 the terms and conditions of an issued permit, or who  
18 intentionally renders inaccurate a monitoring device or record  
19 required to be maintained by the department, is guilty of a  
20 felony and shall be fined not less than \$2,500.00 or more than  
21 ~~\$25,000.00~~ **\$50,000.00** for each violation. **However, for a**  
22 **serious violation, the fine shall be not less than \$5,000.00 and**  
23 **for a significant noncomplier violation, the fine shall be not**  
24 **less than \$10,000.00.** The court may impose an additional fine of  
25 not more than ~~\$25,000.00~~ **\$50,000.00** for each day during which  
26 the unlawful discharge occurred. If the conviction is for a  
27 violation committed after a first conviction of the person under

1 this subsection, the court shall impose a fine of not less than  
2 ~~-\$25,000.00-~~ **\$50,000.00** per day and not more than ~~-\$50,000.00~~  
3 **\$100,000.00** per day of violation. Upon conviction, in addition  
4 to a fine, the court in its discretion may sentence the defendant  
5 to imprisonment for not more than ~~-2-~~ **4** years or impose probation  
6 upon a person for a violation of this part. With the exception  
7 of the issuance of criminal complaints, issuance of warrants, and  
8 the holding of an arraignment, the circuit court for the county  
9 in which the violation occurred has exclusive jurisdiction.

10 However, ~~the~~ **a** person ~~shall~~ **is** not ~~be~~ subject to the  
11 penalties of this subsection if the discharge of the effluent is  
12 in conformance with and obedient to a rule, order, or permit of  
13 the department. In addition to a fine, the attorney general may  
14 file a civil suit in a court of competent jurisdiction to recover  
15 the full value of the injuries done to the natural resources of  
16 the state and the costs of surveillance and enforcement by the  
17 state resulting from the violation.

18 (3) Upon a finding by the court that the actions of a civil  
19 defendant pose or posed a substantial endangerment to the public  
20 health, safety, or welfare, the court shall impose, in addition  
21 to the ~~penalties~~ **sanctions** set forth in subsection (1), a **civil**  
22 fine of not less than ~~-\$500,000.00-~~ **\$1,000,000.00** and not more  
23 than ~~-\$5,000,000.00-~~ **\$10,000,000.00**.

24 (4) Upon a finding by the court that the actions of a  
25 criminal defendant pose or posed a substantial endangerment to  
26 the public health, safety, or welfare, the court shall impose, in  
27 addition to the penalties set forth in subsection (2), a fine of

1 not less than ~~-\$1,000,000.00-~~ **\$2,000,000.00** and, in addition to a  
 2 fine, a sentence of ~~-5-~~ **10** years' imprisonment.

3 (5) To find a defendant civilly or criminally liable for  
 4 substantial endangerment under subsections (3) and (4), the court  
 5 shall determine that the defendant knowingly or recklessly acted  
 6 in such a manner as to cause a danger of death or serious bodily  
 7 injury and that either of the following occurred:

8 (a) The defendant had an actual awareness, belief, or  
 9 understanding that his or her conduct would cause a substantial  
 10 danger of death or serious bodily injury.

11 (b) The defendant acted in gross disregard of the standard of  
 12 care that any reasonable person should observe in similar  
 13 circumstances.

14 (6) Knowledge possessed by a person other than the defendant  
 15 under subsection (5) may be attributable to the defendant if the  
 16 defendant took affirmative steps to shield himself or herself  
 17 from the relevant information.

18 (7) ~~Any~~ **A** fine or other award ordered paid pursuant to this  
 19 section shall do ~~both~~ **all** of the following:

20 (a) Be payable to the state of Michigan ~~and~~ **if the fine or**  
 21 **award was recovered in a civil action.**

22 (b) **Be** credited to the general fund **if the fine or award was**  
 23 **recovered in a civil action.**

24 (c) ~~(b)~~ **Constitute** a lien on any property, of any nature or  
 25 kind, owned by the defendant.

26 (8) A lien under subsection ~~-(7)(b)-~~ **(7)(c)** shall take effect  
 27 and have priority over all other liens and encumbrances except

1 those filed or recorded prior to the date of judgment only if  
2 notice of the lien is filed or recorded as required by state or  
3 federal law.

4 (9) A lien filed or recorded pursuant to subsection (8) shall  
5 be terminated according to the procedures required by state or  
6 federal law within 14 days after the fine or other award ordered  
7 to be paid is paid.

8 (10) In addition to any other method of collection, any fine  
9 or other award ordered paid may be recovered by right of setoff  
10 to any debt owed to the defendant by the state of Michigan,  
11 including the right to a refund of income taxes paid.

12 (11) As used in this section:

13 (a) "Conventional pollutant" means a substance that is not a  
14 toxic or hazardous pollutant.

15 (b) "Serious violation" means a violation in which either of  
16 the following conditions exists:

17 (i) The violation involves the exceedance of a permit  
18 limitation for a conventional pollutant of 20% or more.

19 (ii) The violation involves the exceedance of a permit  
20 limitation for a toxic or hazardous pollutant by 40% or more.

21 (c) "Significant noncomplier violation" means a violation in  
22 which any of the following conditions exist:

23 (i) The violator has failed to obtain a permit for the  
24 discharge.

25 (ii) The violation is a serious violation involving the same  
26 pollutant at the same discharge point occurring during any 2  
27 months of any 6-month period.

1       (iii) The violation involves the exceedance of a permit  
2 limitation for the same pollutant at the same discharge point  
3 occurring during any 4 months of any 6-month period.

4       (iv) The violation is for the failure to submit a report  
5 under section 8111 during any 2 months of any 6-month period.

6       (d) "Toxic or hazardous pollutant" means either or both of  
7 the following:

8       (i) A pollutant on the list of toxic pollutants established  
9 in 40 C.F.R. 401.15.

10       (ii) A substance on the list of hazardous substances  
11 established in 40 C.F.R. 116.4.