

HOUSE BILL No. 4223

February 8, 2005, Introduced by Reps. Kathleen Law, Plakas, Anderson, Hopgood, Zelenko, Accavitti, Alma Smith and Farrah and referred to the Committee on Natural Resources, Great Lakes, Land Use, and Environment.

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), section 3115 as amended by 2004 PA 143.

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 (1),
7 THE department may enter at all reasonable times in or upon any
8 private or public property for the purpose of inspecting and

1 investigating conditions relating to the pollution of any waters of
2 the state and the obstruction of the floodways of the rivers and
3 streams of this state. The department may call upon any officer,
4 board, department, school, university, or other state institution
5 and the officers or employees thereof for any assistance considered
6 necessary to implement this part.

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

20 (2) **IN ADDITION TO THE REPORTS FILED UNDER SUBSECTION (1), A**
21 **PERSON SHALL REPORT ANY DISCHARGE TO THE WATERS OF THE STATE OR TO**
22 **ANY SEWER SYSTEM OF A SUBSTANCE NOT AUTHORIZED IN HIS OR HER PERMIT**
23 **OR A SUBSTANCE AUTHORIZED IN HIS OR HER PERMIT BUT IN AN AMOUNT OR**
24 **CONCENTRATION HIGHER THAN AUTHORIZED IN THE PERMIT, THAT MAY POSE A**
25 **THREAT TO PUBLIC HEALTH, SAFETY, WELFARE, OR TO THE ENVIRONMENT.**
26 **THE PERSON SHALL REPORT THE DISCHARGE TO THE DEPARTMENT WITHIN 2**
27 **HOURS OF THE BEGINNING OF THE DISCHARGE.**

1 (3) The information **COLLECTED UNDER SUBSECTIONS (1) AND (2)**
2 shall be used by the department only for purposes of water
3 pollution control. The department shall provide proper and adequate
4 facilities and procedures to safeguard the confidentiality of
5 manufacturing proprietary processes, except that confidentiality
6 shall not extend to waste products discharged to the waters of the
7 state. ~~Operations~~

8 (4) **SUBJECT TO SUBSECTION (3), THE DEPARTMENT SHALL MAKE**
9 **INFORMATION COLLECTED UNDER SUBSECTIONS (1) AND (2) AVAILABLE TO**
10 **THE PUBLIC.**

11 (5) **SUBJECT TO SECTION 3115, A PERSON WHO FAILS TO FILE A**
12 **MONTHLY REPORT CONTAINING THE INFORMATION REQUIRED BY THIS SECTION**
13 **IS SUBJECT TO A STATE CIVIL INFRACTION AND SHALL BE ORDERED TO PAY**
14 **A CIVIL FINE OF \$100.00 FOR EACH DAY THAT A REPORT CONTAINING THE**
15 **INFORMATION REQUIRED BY THIS SECTION HAS NOT BEEN SUBMITTED. IN**
16 **ADDITION, OPERATIONS** of a business or industry that violate this
17 section may be enjoined by an action commenced by the attorney
18 general in a court of competent jurisdiction.

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

23 Sec. 3115. (1) The department may request the attorney general
24 to commence a civil action for appropriate relief, including a
25 permanent or temporary injunction, for a violation of this part or
26 a provision of a permit or order issued or rule promulgated under
27 this part. An action under this subsection may be brought in the

1 circuit court for the county of Ingham or for the county in which
2 the defendant is located, resides, or is doing business. If
3 requested by the defendant within 21 days after service of process,
4 the court shall grant a change of venue to the circuit court for
5 the county of Ingham or for the county in which the alleged
6 violation occurred, is occurring, or, in the event of a threat of
7 violation, will occur. The court has jurisdiction to restrain the
8 violation and to require compliance. In addition to any other
9 relief granted under this subsection, the court, except as
10 otherwise provided in this subsection, shall impose a civil fine of
11 not less than \$2,500.00 and the court may award reasonable attorney
12 fees and costs to the prevailing party. However, **FOR A SERIOUS**
13 **VIOLATION, THE FINE SHALL BE NOT LESS THAN \$5,000.00 AND FOR A**
14 **SIGNIFICANT NONCOMPLIANT VIOLATION, THE FINE SHALL BE NOT LESS THAN**
15 **\$10,000.00. IN ADDITION,** all of the following apply:

16 (a) The maximum fine imposed by the court **UNDER THIS**
17 **SUBSECTION** shall be not more than ~~-\$25,000.00-~~ **\$50,000.00** per day
18 of violation.

19 (b) For a failure to report a release to the department or to
20 the primary public safety answering point under section 3111b(1),
21 the court shall impose a civil fine of not more than \$2,500.00.

22 (c) For a failure to report a release to the local health
23 department under section 3111b(2), the court shall impose a civil
24 fine of not more than \$500.00.

25 (2) A person who at the time of the violation knew or should
26 have known that he or she discharged a substance contrary to this
27 part, or contrary to a permit or order issued or rule promulgated

1 under this part, or who intentionally makes a false statement,
2 representation, or certification in an application for or form
3 pertaining to a permit or in a notice or report required by the
4 terms and conditions of an issued permit, or who intentionally
5 renders inaccurate a monitoring device or record required to be
6 maintained by the department, is guilty of a felony and shall be
7 fined not less than \$2,500.00 or more than ~~\$25,000.00~~ **\$50,000.00**
8 for each violation. **HOWEVER, FOR A SERIOUS VIOLATION, THE FINE**
9 **SHALL BE NOT LESS THAN \$5,000.00 AND FOR A SIGNIFICANT NONCOMPLIER**
10 **VIOLATION, THE FINE SHALL BE NOT LESS THAN \$10,000.00.** The court
11 may impose an additional fine of not more than ~~\$25,000.00~~
12 **\$50,000.00** for each day during which the unlawful discharge
13 occurred. If the conviction is for a violation committed after a
14 first conviction of the person under this subsection, the court
15 shall impose a fine of not less than ~~\$25,000.00~~ **\$50,000.00** per
16 day and not more than ~~\$50,000.00~~ **\$100,000.00** per day of
17 violation. Upon conviction, in addition to a fine, the court in its
18 discretion may sentence the defendant to imprisonment for not more
19 than ~~2~~ **4** years or impose probation upon a person for a violation
20 of this part. With the exception of the issuance of criminal
21 complaints, issuance of warrants, and the holding of an
22 arraignment, the circuit court for the county in which the
23 violation occurred has exclusive jurisdiction. However, ~~the~~ **A**
24 person ~~shall~~ **IS** not be subject to the penalties of this
25 subsection if the discharge of the effluent is in conformance with
26 and obedient to a rule, order, or permit of the department. In
27 addition to a fine, the attorney general may file a civil suit in a

1 court of competent jurisdiction to recover the full value of the
2 injuries done to the natural resources of the state and the costs
3 of surveillance and enforcement by the state resulting from the
4 violation.

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

11 (4) Upon a finding by the court that the actions of a criminal
12 defendant pose or posed a substantial endangerment to the public
13 health, safety, or welfare, the court shall impose, in addition to
14 the penalties set forth in subsection (2), a fine of not less than
15 ~~\$1,000,000.00-~~ **\$2,000,000.00** and, in addition to a fine, a sentence
16 of ~~-5-~~ 10 years' imprisonment.

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

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

25 (b) The defendant acted in gross disregard of the standard of
26 care that any reasonable person should observe in similar
27 circumstances.

1 (6) Knowledge possessed by a person other than the defendant
2 under subsection (5) may be attributable to the defendant if the
3 defendant took affirmative steps to shield himself or herself from
4 the relevant information.

5 (7) A civil fine or other award ordered paid pursuant to this
6 section shall ~~do~~ **CONFORM WITH** both of the following:

7 (a) Be payable to the state of Michigan and credited to the
8 general fund.

9 (b) Constitute a lien on any property, of any nature or kind,
10 owned by the defendant.

11 (8) A lien under subsection (7)(b) shall take effect and have
12 priority over all other liens and encumbrances, except those filed
13 or recorded prior to the date of judgment, only if notice of the
14 lien is filed or recorded as required by state or federal law.

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

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

23 **(11) AS USED IN THIS SECTION:**

24 **(A) "CONVENTIONAL POLLUTANT" MEANS A SUBSTANCE THAT IS NOT A**
25 **TOXIC OR HAZARDOUS POLLUTANT.**

26 **(B) "SERIOUS VIOLATION" MEANS A VIOLATION IN WHICH EITHER OF**
27 **THE FOLLOWING CONDITIONS EXISTS:**

1 (i) THE VIOLATION INVOLVES THE EXCEEDANCE OF A PERMIT
2 LIMITATION FOR A CONVENTIONAL POLLUTANT OF 20% OR MORE.

3 (ii) THE VIOLATION INVOLVES THE EXCEEDANCE OF A PERMIT
4 LIMITATION FOR A TOXIC OR HAZARDOUS POLLUTANT BY 40% OR MORE.

5 (C) "SIGNIFICANT NONCOMPLIER VIOLATION" MEANS A VIOLATION IN
6 WHICH ANY OF THE FOLLOWING CONDITIONS EXIST:

7 (i) THE VIOLATOR HAS FAILED TO OBTAIN A PERMIT FOR THE
8 DISCHARGE.

9 (ii) THE VIOLATION IS A SERIOUS VIOLATION INVOLVING THE SAME
10 POLLUTANT AT THE SAME DISCHARGE POINT OCCURRING DURING ANY 2 MONTHS
11 OF ANY 6-MONTH PERIOD.

12 (iii) THE VIOLATION INVOLVES THE EXCEEDANCE OF A PERMIT
13 LIMITATION FOR THE SAME POLLUTANT AT THE SAME DISCHARGE POINT
14 OCCURRING DURING ANY 4 MONTHS OF ANY 6-MONTH PERIOD.

15 (iv) THE VIOLATION IS FOR THE FAILURE TO SUBMIT A REPORT UNDER
16 SECTION 3111 DURING ANY 2 MONTHS OF ANY 6-MONTH PERIOD.

17 (D) "TOXIC OR HAZARDOUS POLLUTANT" MEANS EITHER OR BOTH OF THE
18 FOLLOWING:

19 (i) A POLLUTANT ON THE LIST OF TOXIC POLLUTANTS ESTABLISHED IN
20 40 CFR 401.15.

21 (ii) A SUBSTANCE ON THE LIST OF HAZARDOUS SUBSTANCES
22 ESTABLISHED IN 40 CFR 116.4.