

SENATE BILL No. 444

April 25, 2007, Introduced by Senators BASHAM, CLARK-COLEMAN, BRATER, ANDERSON, SCOTT, OLSHOVE, THOMAS, SCHAUER, JACOBS, CLARKE and SWITALSKI and referred to the Committee on Agriculture.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 3101, 3103, and 3112 (MCL 324.3101, 324.3103, and 324.3112), section 3101 as amended by 2006 PA 97 and sections 3103 and 3112 as amended by 2005 PA 33, and by adding section 3112d.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 3101. As used in this part:

(A) "ANIMAL FEEDING OPERATION" OR "AFO" MEANS THAT TERM AS IT IS DEFINED IN R 323.2102 OF THE MICHIGAN ADMINISTRATIVE CODE ON THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SUBDIVISION.

(B) ~~(a)~~-"Aquatic nuisance species" means a nonindigenous species that threatens the diversity or abundance of native species or the ecological stability of infested waters, or commercial,

1 agricultural, aquacultural, or recreational activities dependent on
2 such waters.

3 (C) ~~(b)~~—"Ballast water" means water and associated solids
4 taken on board a vessel to control or maintain trim, draft,
5 stability, or stresses on the vessel, without regard to the manner
6 in which it is carried.

7 (D) ~~(e)~~—"Ballast water treatment method" means a method of
8 treating ballast water and sediments to remove or destroy living
9 biological organisms through 1 or more of the following:

10 (i) Filtration.

11 (ii) The application of biocides or ultraviolet light.

12 (iii) Thermal methods.

13 (iv) Other treatment techniques approved by the department.

14 (E) **"COMPREHENSIVE NUTRIENT MANAGEMENT PLAN" OR "CNMP" MEANS A**
15 **COMPREHENSIVE NUTRIENT MANAGEMENT PLAN AS DESCRIBED IN R 323.2196**
16 **OF THE MICHIGAN ADMINISTRATIVE CODE ON THE EFFECTIVE DATE OF THE**
17 **AMENDATORY ACT THAT ADDED THIS SUBDIVISION.**

18 (F) **"CONCENTRATED ANIMAL FEEDING OPERATION" OR "CAFO" MEANS**
19 **THAT TERM AS IT IS DEFINED IN R 323.2102 OF THE MICHIGAN**
20 **ADMINISTRATIVE CODE ON THE EFFECTIVE DATE OF THE AMENDATORY ACT**
21 **THAT ADDED THIS SUBDIVISION.**

22 (G) ~~(d)~~—"Department" means the department of environmental
23 quality.

24 (H) ~~(e)~~—"Detroit consumer price index" means the most
25 comprehensive index of consumer prices available for the Detroit
26 area from the United States department of labor, bureau of labor
27 statistics.

1 (I) ~~(f)~~—"Emergency management coordinator" means that term as
2 defined in section 2 of the emergency management act, 1976 PA 390,
3 MCL 30.402.

4 (J) ~~(g)~~—"Great Lakes" means the Great Lakes and their
5 connecting waters, including Lake St. Clair.

6 (K) ~~(h)~~—"Group 1 facility" means a facility whose discharge is
7 described by R 323.2218 of the Michigan administrative code.

8 (L) ~~(i)~~—"Group 2 facility" means a facility whose discharge is
9 described by R 323.2210(y), R 323.2215, or R 323.2216 of the
10 Michigan administrative code.

11 (M) ~~(j)~~—"Group 3 facility" means a facility whose discharge is
12 described by R 323.2211 or R 323.2213 of the Michigan
13 administrative code.

14 (N) ~~(k)~~—"Local health department" means that term as defined
15 in section 1105 of the public health code, 1978 PA 368, MCL
16 333.1105.

17 (O) ~~(l)~~—"Local unit" means a county, city, village, or township
18 or an agency or instrumentality of any of these entities.

19 (P) ~~(m)~~—"Municipality" means this state, a county, city,
20 village, or township, or an agency or instrumentality of any of
21 these entities.

22 (Q) ~~(n)~~—"National response center" means the national
23 communications center established under the clean water act, 33 USC
24 1251 to 1387, located in Washington, DC, that receives and relays
25 notice of oil discharge or releases of hazardous substances to
26 appropriate federal officials.

27 (R) ~~(o)~~—"Nonocean-going vessel" means a vessel that is not an

1 oceangoing vessel.

2 (S) ~~(p)~~—"Oceangoing vessel" means a vessel that operates on
3 the Great Lakes or the St. Lawrence waterway after operating in
4 waters outside of the Great Lakes or the St. Lawrence waterway.

5 (T) ~~(q)~~—"Open water disposal of contaminated dredge materials"
6 means the placement of dredge materials contaminated with toxic
7 substances as defined in R 323.1205 of the Michigan administrative
8 code into the open waters of the waters of the state but does not
9 include the siting or use of a confined disposal facility
10 designated by the United States army corps of engineers or beach
11 nourishment activities utilizing uncontaminated materials.

12 (U) ~~(r)~~—"Primary public safety answering point" means that
13 term as defined in section 102 of the emergency telephone service
14 enabling act, 1986 PA 32, MCL 484.1102.

15 (V) ~~(s)~~—"Sediments" means any matter settled out of ballast
16 water within a vessel.

17 (W) ~~(t)~~—"Sewage sludge" means sewage sludge generated in the
18 treatment of domestic sewage, other than only septage or industrial
19 waste.

20 (X) ~~(u)~~—"Sewage sludge derivative" means a product for land
21 application derived from sewage sludge that does not include solid
22 waste or other waste regulated under this act.

23 (Y) ~~(v)~~—"Sewage sludge generator" means a person who generates
24 sewage sludge that is applied to land.

25 (Z) ~~(w)~~—"Sewage sludge distributor" means a person who
26 applies, markets, or distributes, except at retail, a sewage sludge
27 derivative.

1 **(AA)** ~~(x)~~—"St. Lawrence waterway" means the St. Lawrence river,
2 the St. Lawrence seaway, and the gulf of St. Lawrence.

3 **(BB)** ~~(y)~~—"Threshold reporting quantity" means that term as
4 defined in R 324.2002 of the Michigan administrative code.

5 **(CC)** ~~(z)~~—"Waters of the state" means groundwaters, lakes,
6 rivers, and streams and all other watercourses and waters,
7 including the Great Lakes, within the jurisdiction of this state.

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

26 (2) The department shall enforce this part and may promulgate
27 rules as it considers necessary to carry out its duties under this

1 part. However, notwithstanding any rule-promulgation authority that
2 is provided in this part, except for rules authorized under section
3 3112(6), the department shall not promulgate any additional rules
4 under this part after December 31, 2006.

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

14 (4) Notwithstanding the limitations on rule promulgation under
15 subsection (2), rules promulgated under this part before January 1,
16 2007 shall remain in effect unless rescinded.

17 **(5) IF THE DEPARTMENT IDENTIFIES A VIOLATION OF THIS PART BY A**
18 **CAFO THAT MAY ADVERSELY AFFECT PUBLIC HEALTH, THE DEPARTMENT SHALL**
19 **NOTIFY THE DEPARTMENT OF COMMUNITY HEALTH. THE DEPARTMENT SHALL**
20 **COORDINATE CAFO INVESTIGATIONS, ENFORCEMENT ACTIONS, AND COMMUNITY**
21 **NOTIFICATIONS TO ENSURE COMPLIANCE WITH THIS PART AND THE**
22 **PROTECTION OF PUBLIC HEALTH.**

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

26 (2) An application for a permit under subsection (1) shall be
27 submitted to the department. Within 30 days after an application

1 for a new or increased use is received, the department shall
2 determine whether the application is administratively complete.
3 Within 90 days after an application for reissuance of a permit is
4 received, the department shall determine whether the application is
5 administratively complete. If the department determines that an
6 application is not complete, the department shall notify the
7 applicant in writing within the applicable time period. If the
8 department does not make a determination as to whether the
9 application is complete within the applicable time period, the
10 application shall be considered to be complete.

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

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

1 both.

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

12 (6) Beginning January 1, 2007, all oceangoing vessels engaging
13 in port operations in this state shall obtain a permit from the
14 department. The department shall issue a permit for an oceangoing
15 vessel only if the applicant can demonstrate that the oceangoing
16 vessel will not discharge aquatic nuisance species or if the
17 oceangoing vessel discharges ballast water or other waste or waste
18 effluent, that the operator of the vessel will utilize
19 environmentally sound technology and methods, as determined by the
20 department, that can be used to prevent the discharge of aquatic
21 nuisance species. The department shall cooperate to the fullest
22 extent practical with other Great Lakes basin states, the Canadian
23 Great Lakes provinces, the Great Lakes panel on aquatic nuisance
24 species, the Great Lakes fishery commission, the international
25 joint commission, and the Great Lakes commission to ensure
26 development of standards for the control of aquatic nuisance
27 species that are broadly protective of the waters of the state and

1 other natural resources. Permit fees for permits under this
2 subsection shall be assessed as provided in section 3120. The
3 permit fees for an individual permit issued under this subsection
4 shall be the fees specified in section 3120(1)(a) and (5)(a). The
5 permit fees for a general permit issued under this subsection shall
6 be the fees specified in section 3120(1)(c) and (5)(b)(i). Permits
7 under this subsection shall be issued in accordance with the
8 timelines provided in section 3120. The department may promulgate
9 rules to implement this subsection.

10 (7) A PERSON SHALL NOT OPERATE A CAFO IN THIS STATE UNLESS THE
11 CAFO HAS BEEN ISSUED A PERMIT UNDER THIS PART. NOTWITHSTANDING ANY
12 OTHER PROVISION OF THIS PART, UNTIL JANUARY 1, 2012, THE DEPARTMENT
13 SHALL NOT ISSUE A PERMIT FOR OR OTHERWISE AUTHORIZE THE OPERATION
14 OF A CAFO THAT WAS NOT IN EXISTENCE PRIOR TO APRIL 25, 2007.
15 HOWEVER, THE DEPARTMENT MAY REISSUE A PERMIT TO A CAFO THAT HAS
16 PREVIOUSLY RECEIVED A PERMIT UNDER THIS PART AS LONG AS THE
17 REISSUED PERMIT DOES NOT ALLOW AN INCREASE IN THE NUMBER OF ANIMALS
18 AT THE CAFO.

19 (8) NOTWITHSTANDING ANY OTHER PROVISION OF THIS PART, THE
20 DEPARTMENT SHALL NOT ISSUE A PERMIT FOR OR OTHERWISE AUTHORIZE THE
21 CONSTRUCTION OR OPERATION OF A NEW WASTE STORAGE FACILITY AT AN AFO
22 THAT HAS THE CAPACITY TO HOLD 500,000 OR MORE GALLONS.
23 ADDITIONALLY, THE DEPARTMENT SHALL NOT ISSUE A PERMIT OR OTHERWISE
24 AUTHORIZE THE EXPANSION OF A WASTE STORAGE FACILITY AT AN AFO THAT
25 HAS THE CAPACITY TO HOLD OR WILL, FOLLOWING THE EXPANSION, HAVE THE
26 CAPACITY TO HOLD 500,000 OR MORE GALLONS. THIS SUBSECTION DOES NOT
27 PROHIBIT THE REPAIR OR MAINTENANCE OF A WASTE STORAGE FACILITY.

1 (9) THE OWNER OR OPERATOR OF A CAFO SHALL NOT TRANSFER THE
2 PERMIT FOR THAT CAFO TO A PERSON WHO HAS BEEN DETERMINED BY A COURT
3 TO HAVE VIOLATED THIS PART WITH RESPECT TO OPERATIONS AT A CAFO.

4 SEC. 3112D. (1) WITHIN 2 YEARS AFTER THE EFFECTIVE DATE OF THE
5 AMENDATORY ACT THAT ADDED THIS SECTION, THE DEPARTMENT, IN
6 CONSULTATION WITH THE DEPARTMENT OF AGRICULTURE, SHALL PREPARE AND
7 SUBMIT TO EACH MEMBER OF THE LEGISLATURE A REPORT THAT INCLUDES ALL
8 OF THE FOLLOWING INFORMATION:

9 (A) THE NUMBER OF CAFOS THAT HAVE RECEIVED A PERMIT UNDER THIS
10 PART.

11 (B) THE NUMBER OF AFOS THAT HAVE APPLIED FOR A PERMIT UNDER
12 THIS PART.

13 (C) THE NUMBER OF CAFOS THAT HAVE NOT APPLIED FOR A PERMIT
14 UNDER THIS PART.

15 (D) A SUMMARY OF THE DEPARTMENT'S INSPECTION PROTOCOL AND A
16 SCHEDULE FOR INSPECTING CAFOS.

17 (E) THE NUMBER OF AFOS THAT ARE LARGER THAN 50% OF THE MINIMUM
18 SIZE OF A CAFO IN TERMS OF THE NUMBER OF ANIMALS AT THE AFO.

19 (F) FOR EACH EXISTING CAFO, ALL OF THE FOLLOWING:

20 (i) THE LOCATION OF THE CAFO AND THE WATERSHED AND
21 SUBWATERSHEDS IN WHICH THE CAFO IS LOCATED.

22 (ii) WHETHER THERE ARE EXISTING WATERSHED IMPAIRMENTS IN THE
23 WATERSHED IN WHICH THE CAFO IS LOCATED.

24 (iii) THE PROXIMITY OF THE CAFO TO DRINKING WATER WELLS OR
25 SENSITIVE NATURAL AREAS.

26 (iv) THE TYPE OF PERMIT ISSUED TO THE CAFO UNDER THIS PART AND
27 THE TOTAL PERMIT FEE PAID.

1 (v) THE NUMBER AND SPECIES OF ANIMALS AT THE CAFO.

2 (vi) THE NUMBER, TYPE, AND CAPACITY OF WASTE STORAGE FACILITIES
3 AT THE CAFO, INCLUDING ALL OF THE FOLLOWING WITH REGARD TO EACH
4 WASTE STORAGE FACILITY:

5 (A) THE LOCATION OF THE WASTE STORAGE FACILITY.

6 (B) A DESCRIPTION OF THE LINER UTILIZED.

7 (C) THE DEPTH TO GROUNDWATER AT THE LOCATION OF THE WASTE
8 STORAGE FACILITY.

9 (D) THE DEPTH OF THE WASTE STORAGE FACILITY.

10 (E) WHETHER THE WASTE STORAGE FACILITY MEETS NRCS STANDARD
11 313, DATED JUNE 2003.

12 (F) THE RESULTS OF ANY GROUNDWATER TESTS CONDUCTED IN THE
13 VICINITY OF THE WASTE STORAGE FACILITY WITHIN THE LAST YEAR.

14 (G) THE RESULTS OF ANY SOIL BORING TESTS CONDUCTED IN THE
15 VICINITY OF THE WASTE STORAGE FACILITY.

16 (H) THE RESULTS OF OTHER TESTS FOR WASTE STORAGE FACILITY
17 INTEGRITY.

18 (I) A CALCULATION OF THE EXPECTED RATE OF LEAKAGE FROM EACH
19 WASTE STORAGE FACILITY STRUCTURE, IN GALLONS.

20 (vii) A DESCRIPTION OF ANY CAFO WASTE TREATMENT SYSTEMS IN
21 OPERATION AT THE CAFO.

22 (viii) THE NUMBER OF ACRES OF LAND UNDER CONTROL OF THE CAFO
23 OPERATOR FOR FIELD APPLICATION OF CAFO WASTES.

24 (ix) A SUMMARY OF GROUNDWATER AND SURFACE WATER TESTS CONDUCTED
25 BY THE DEPARTMENT, THE DEPARTMENT OF AGRICULTURE, A LOCAL HEALTH
26 DEPARTMENT, OR ANY OTHER PERSON AT THE CAFO.

27 (x) THE STATUS OF COMPLIANCE WITH A PERMIT REQUIREMENT FOR

1 SUBMITTING AND UPDATING A CNMP.

2 (xi) A MAP OF LAND APPLICATION AREAS THAT ARE INCLUDED IN MORE
3 THAN 1 CNMP.

4 (xii) A SUMMARY OF VIOLATIONS, CONVICTIONS, COURT JUDGMENTS,
5 AND FINES OR OTHER REMEDIES ASSESSED AGAINST THE CAFO, IF ANY.

6 (xiii) THE NUMBER OF COMPLAINTS MADE AGAINST THE CAFO TO THE
7 DEPARTMENT OR THE DEPARTMENT OF AGRICULTURE.

8 (xiv) THE RESULTS OF ANY AIR QUALITY TESTS CONDUCTED IN THE
9 VICINITY OF A CAFO.

10 (G) AN APPROXIMATE BUDGET AVAILABLE TO THE DEPARTMENT FOR
11 MONITORING AND ENFORCEMENT OF CAFOS STATEWIDE.

12 (H) THE NUMBER OF FTES ASSIGNED FOR MONITORING AND ENFORCEMENT
13 OF CAFOS IN EACH DEPARTMENTAL DISTRICT.

14 (I) AN ESTIMATED NUMBER OF HOURS REQUIRED TO PROCESS EACH CAFO
15 PERMIT UNDER THIS PART.

16 (J) AN ESTIMATED COST OF PROCESSING EACH CAFO PERMIT,
17 INCLUDING, BUT NOT LIMITED TO, PUBLIC NOTIFICATION, HEARINGS, AND
18 INSPECTIONS.

19 (K) THE NUMBER OF FTES ASSIGNED TO PROCESS CAFO PERMITS UNDER
20 THIS PART.

21 (l) A SUMMARY OF THE DEPARTMENT'S PROTOCOL FOR RESPONDING TO
22 THE BREACH OF A WASTE STORAGE FACILITY OR OTHER MAJOR WASTE
23 DISCHARGE FROM A CAFO. THE PROTOCOL SHALL INCLUDE, BUT NOT BE
24 LIMITED TO, ALL OF THE FOLLOWING:

25 (i) ESTIMATED RESPONSE TIME.

26 (ii) CONTAINMENT OF THE DISCHARGE.

27 (iii) COMMUNITY NOTIFICATION.

1 (iv) REMEDIATION.

2 (M) A SUMMARY OF THE DEPARTMENT'S PROTOCOL FOR RESPONDING TO
3 AIR QUALITY EMERGENCIES AT A CAFO, INCLUDING, BUT NOT LIMITED TO,
4 HIGH LEVELS OF HYDROGEN SULFIDE, METHANE, OR AMMONIA. THE PROTOCOL
5 SHALL INCLUDE, BUT NOT BE LIMITED TO, ALL OF THE FOLLOWING:

6 (i) ESTIMATED RESPONSE TIME.

7 (ii) COMMUNITY NOTIFICATION.

8 (iii) EVACUATION.

9 (iv) REMEDIATION.

10 (N) FOR EACH CAFO, A SUMMARY OF THE CAFO'S CNMP THAT IS ON
11 FILE WITH THE DEPARTMENT AND WHETHER THE CAFO HAS RECEIVED A PERMIT
12 UNDER THIS PART.

13 (2) THE DEPARTMENT SHALL POST THE REPORT PREPARED UNDER THIS
14 SECTION ON THE DEPARTMENT'S WEBSITE AND SHALL MAKE COPIES OF THE
15 REPORT AVAILABLE TO THE GENERAL PUBLIC UPON REQUEST FREE OF CHARGE.