

STATE OF MICHIGAN
96TH LEGISLATURE
REGULAR SESSION OF 2011

Introduced by Reps. Daley, Outman, McBroom, Lyons, Johnson, Price, Rendon, Denby, Pscholka, Tyler, Glardon, Horn, Damrow, Bumstead, Heise, Kurtz, Haveman, Shirkey, Muxlow, Potvin, Lori, Hughes, Agema, Brunner, Cotter, Crawford, Franz, Gilbert, Haines, Haugh, Hooker, Huuki, Jacobsen, Knollenberg, LaFontaine, Lund, MacGregor, MacMaster, O'Brien, Oakes, Olson, Poleski, Santana, Segal, Shaughnessy, Somerville, Stamas and Walsh

ENROLLED HOUSE BILL No. 4212

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 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 8702, 8703, 8704, 8705, 8706, 8707, 8708, 8709, 8710, 8713, 8714, 8715, and 8716 (MCL 324.8702, 324.8703, 324.8704, 324.8705, 324.8706, 324.8707, 324.8708, 324.8709, 324.8710, 324.8713, 324.8714, 324.8715, and 324.8716), section 8703 as amended by 1995 PA 61, section 8707 as amended by 2000 PA 100, section 8715 as amended by 2008 PA 18, and section 8716 as amended by 2007 PA 174, and by adding section 8713a.

The People of the State of Michigan enact:

Sec. 8702. (1) "Activity plan" means a plan for a specific location that identifies all environmental risks and includes a time frame for implementation of conservation practices to address the environmental risks.

(2) "Agronomic rate" means either of the following:

(a) For pesticides, the application of pesticide contaminated materials in such a manner as not to exceed legal labeled rates.

(b) For fertilizers, the application of fertilizer contaminated materials at rates not to exceed those recommended by the Michigan state university extension, taking all available sources of nutrients into account.

(3) "Analyte" or "analytes" means the material or materials that an analysis is designed to detect either qualitatively or quantitatively.

(4) "Conservation plan" means that term as it is defined in part 82.

(5) "Conservation practices" means that term as it is defined in part 82.

(6) "Confirmation mechanism" means a scientific process for the verification of detection of analytes in groundwater utilizing at least 2 separate water samples collected at time intervals of greater than 14 days from the same groundwater sampling point and analyzed by peer reviewed and authenticated laboratory methodologies.

(7) "Contaminant" means any pesticide or fertilizer originated chemical, radionuclide, ion, synthetic organic compound, microorganism, or other waste that does not occur naturally or that naturally occurs at a lower concentration than detected.

(8) "Contamination" means the direct or indirect introduction into the environment of any contaminant caused in whole or in part by human activity.

(9) “Demonstration project” means a project designed to illustrate the implementation and impact of alternate conservation practices.

(10) “Department” means the department of agriculture and rural development.

(11) “Director” means the director of the department or his or her designee.

Sec. 8703. (1) “Envelope monitoring” means monitoring of groundwater in areas adjacent to properties where groundwater is contaminated to determine the concentration and spatial distribution of the contaminant in the aquifer.

(2) “Environmental assurance advisory council” means the environmental assurance advisory council established in section 8708.

(3) “Farm” means that term as it is defined in section 2 of the Michigan right to farm act, 1981 PA 93, MCL 286.472.

(4) “Farmer” means a person who owns or operates a farm.

(5) “Fertilizer” means a fertilizer as defined in part 85.

(6) “Fund” means the freshwater protection fund created in section 8716.

(7) “General screening” means monitoring of groundwater for the purpose of determining the presence and concentration of analytes.

(8) “Groundwater” means underground water within the zone of saturation.

(9) “MAEAP” or “Michigan agriculture environmental assurance program” means the Michigan agriculture environmental assurance program provided for in section 8710.

(10) “MAEAP standards” means all of the following as adopted by the commission of agriculture and rural development for the purpose of implementing the Michigan agriculture environmental assurance program:

(a) Conservation practices.

(b) Site-specific nutrient management plan requirements.

(c) Emergency protocols.

(d) Completed environmental risk assessments.

(e) United States department of agriculture natural resources conservation service practice standards.

(f) Generally accepted agricultural and management practices developed under the right to farm act, 1981 PA 93, MCL 286.471 to 286.474.

(g) Other standards considered appropriate by the director.

(11) “MAEAP-verified farm” means a farm determined by the department as meeting applicable MAEAP standards through an on-site evaluation.

(12) “Maximum contaminant level” means that term as it is defined in title XIV of the public health service act, chapter 373, 88 Stat. 1660, and regulations promulgated under that act.

(13) “Method detection limit” means the minimum concentration of a substance that can be measured and reported with 99% confidence that the analyte concentration is greater than 0 and is determined from analysis of a sample in a given matrix that contains the analyte.

(14) “Monitoring” means sampling and analysis to determine the levels of pesticides or their breakdown products; fertilizers or their residues; or other analytes as determined by the director.

Sec. 8704. (1) “Nitrogen fertilizer” means a fertilizer that contains nitrogen as a component.

(2) “On-site evaluation” means a specific set of criteria used to voluntarily evaluate a farmer’s property with regard to determination of potential environmental risks.

(3) “Pesticide” means that term as it is defined in part 83.

Sec. 8705. (1) “Registrant” means that term as it is defined in part 83.

(2) “Restricted use pesticide” means that term as it is defined in part 83.

(3) “Site-specific nutrient management plan” means a plan designed to assist farmers in achieving MAEAP standards that includes both of the following:

(a) Conservation practices and nutrient management activities that, when implemented as part of a conservation system, will help to ensure that both production and natural resources protection goals are achieved.

(b) Proposed actions to address soil erosion, manure, and organic by-products and their potential impact on water quality.

(4) “Specialty pesticide” means a disinfectant, sanitizer, germicide, biocide, or other pesticide labeled solely for use directly on humans or pets, or other pesticides labeled solely for use in areas associated with the household or home life including garden and ornamental uses or on institutional or industrial premises, but excludes pesticides labeled for use on rights-of-way, or other outdoor wide-area treatments.

(5) "State management plan" means a plan for the protection of groundwater as required by the United States environmental protection agency's labeling requirements for pesticides and devices pursuant to 40 CFR part 156.

(6) "Technical assistance" means direct on-site assistance provided to individuals that is designed to achieve MAEAP standards.

(7) "Use" means the loading, mixing, applying, storing, transporting, or disposing of a pesticide or fertilizer.

(8) "Verification" means the on-site evaluation performed by the department in accordance with protocols adopted by the commission of agriculture and rural development to determine if MAEAP standards have been met.

(9) "Water monitoring" means monitoring of water in areas adjacent to properties to determine the concentration and spatial distribution of contaminants.

Sec. 8706. The intent of this part is to reduce risks to the environment and public health and promote economic development by assisting farms in achieving MAEAP standards.

Sec. 8707. (1) The director, in conjunction with Michigan state university extension and the Michigan state university agricultural experiment station, and in cooperation with the United States department of agriculture natural resources conservation service, the department of environmental quality, and other professional and industry organizations, shall develop conservation practices for approval by the commission of agriculture and rural development and upon approval shall promote their implementation.

(2) The director, in conjunction with Michigan state university, the department of environmental quality, and other persons the director considers appropriate, shall develop protocols for voluntary on-site evaluations. The on-site evaluations shall be designed to do all of the following:

(a) Provide farmers with the ability to voluntarily determine the relative risk of current practices in relation to sources of contamination.

(b) Provide farmers with the ability to determine the degree to which farm operations are in accord with MAEAP standards and applicable law.

(c) Prioritize operational changes on farms to protect groundwater and surface waters from sources of contamination.

(d) Guide farmers to appropriate technical and educational materials.

(e) Provide farmers with the opportunity for verification.

(3) The director, in conjunction with the environmental assurance advisory council, shall review and evaluate the effectiveness of conservation practices approved under subsection (1).

Sec. 8708. (1) The director shall establish an environmental assurance advisory council composed of all of the following:

(a) The director of the department of agriculture and rural development.

(b) The director of the department of environmental quality.

(c) The director of the Michigan state university extension.

(d) The director of the Michigan state university agricultural experimentation station.

(e) Representatives of all of the following as appointed by the director to serve terms of 3 years:

(i) The United States department of agriculture - farm service agency.

(ii) The United States department of agriculture natural resources conservation service.

(iii) Conservation districts.

(iv) Farmers and other agricultural organizations.

(v) Nongovernmental conservation and environmental organizations.

(vi) Regulated agricultural industries.

(vii) Other persons as determined by the director.

(viii) A member representing each regional environmental assurance team established under section 8709.

(2) The environmental assurance advisory council shall be co-chaired by the representative from Michigan state university extension and a representative from 1 of the farmers and other agricultural organizations.

(3) The environmental assurance advisory council shall advise the director on, but not limited to, the following:

(a) MAEAP standards.

(b) On-site evaluations for verification of specific aspects of a farming operation.

(c) Water quality and environmental monitoring.

(d) Protocols for verification and revocation of verification.

(e) MAEAP activities.

(f) Interagency coordination of conservation programs.

(g) The use of money in the clean water fund created in section 8807 and other funding sources to promote MAEAP and activities to encourage more MAEAP-verified farms.

(h) Options to increase assistance to assist small- and medium-sized farms in achieving MAEAP standards.

(i) The creation of subcommittees as needed to address emerging and ongoing issues.

(4) The environmental assurance advisory council shall do all of the following:

(a) Annually provide recommendations to the director on MAEAP standards and protocols for verification and revocation of verification for consideration by the commission of agriculture and rural development.

(b) Annually submit a report to the department that outlines activities, accomplishments, and emerging issues. The department shall share this report with the agriculture community.

(c) Not later than September 30, 2014, submit to the director a comprehensive report detailing program achievements under the Michigan agricultural environmental assurance program.

Sec. 8709. (1) The director may establish regional environmental assurance teams composed of departmental, educational, and technical assistance personnel, and other persons as determined necessary by the director, or the team, or both for implementation of programs developed under this part.

(2) The environmental assurance teams established under subsection (1) are responsible for implementation of programs developed under this part, including, but not limited to, all of the following:

(a) Providing access to educational opportunities including direct educational assistance and consulting programs; demonstration projects; educational programs; and tours, workshops, and conferences.

(b) Providing access to technical assistance related to any of the following:

(i) On-site evaluation of practices that may impact natural resources.

(ii) The development and implementation of conservation plans.

(iii) The development and implementation of activity plans for persons making conservation practice changes.

(c) Evaluating, as available, grants to persons implementing activity plans and conservation practices required to achieve MAEAP standards.

Sec. 8710. (1) The director, in consultation with the environmental assurance advisory council, shall implement a Michigan agriculture environmental assurance program designed to promote natural resources conservation through education, technical assistance, and verification. The MAEAP shall be a voluntary program that is available to farms throughout the state.

(2) A farmer who desires to have his or her farm MAEAP-verified shall do all of the following:

(a) Complete educational requirements authorized by the department.

(b) Develop and implement 1 or more conservation plans as approved by the director.

(c) Upon completion of subdivisions (a) and (b), contact the department to arrange for an on-site evaluation.

(3) If the department conducts an on-site evaluation and determines that a farm is meeting MAEAP standards, the department shall issue a MAEAP verification. A verification is valid for 3 years.

(4) A farm is eligible for reverification if it is determined to be meeting MAEAP standards through an on-site evaluation conducted by the department or its designee.

(5) Beginning in the state fiscal year ending September 30, 2013, the department shall provide MAEAP verification signs to each MAEAP-verified farm.

(6) A farm that allows its verification to lapse or whose verification is revoked under subsection (7) shall forfeit its verification sign and all other benefits that are provided to MAEAP-verified farms under this act.

(7) The director may revoke verification of a MAEAP-verified farm if any of the following apply:

(a) The department, in consultation with the department of environmental quality, determines with scientific evidence provided by water quality data that the MAEAP-verified farm caused an exceedance of water quality standards as a result of nonconformance with MAEAP standards.

(b) The MAEAP-verified farm fails to conform to MAEAP standards as a result of gross negligence.

(c) The MAEAP-verified farm fails to comply with protocols for verification as approved by the commission of agriculture and rural development.

(d) Upon advice from the interagency technical review panel provided for in section 8710, the director determines that the MAEAP-verified farm is responsible for a pattern of repeated violations of environmental laws, rules, regulations, permit conditions, settlement agreements, orders of consent, or judicial orders that were due to separate and distinct events.

(8) A farmer shall not be liable for groundwater contamination on a MAEAP-verified farm for activities on the MAEAP-verified farm unless he or she was grossly negligent or in violation of state or federal law or failed to comply with the MAEAP standards. This part does not modify or limit any obligation, responsibility, or liability imposed by any other provision of state law.

(9) The department shall establish a MAEAP grants program. Grants issued under the MAEAP grants program are limited to availability of funds collected pursuant to this part. Grants shall be available for all of the following:

- (a) Technical assistance.
- (b) Promotion of the MAEAP.
- (c) Educational programs related to the MAEAP.
- (d) Demonstration projects to implement conservation practices.
- (e) Removal of potential sources of contamination.
- (f) Other purposes considered appropriate by the director.

(10) The department and the department of environmental quality shall enter into a memorandum of understanding to formalize a commitment to promote the MAEAP and to clarify the application of state and federal environmental laws to farms. In addition, the memorandum of understanding shall provide for all of the following:

- (a) An ongoing interagency technical review panel for MAEAP-verified farms that discharge in violation of state or federal law to determine enforcement action.
- (b) Preference for funding for nonpoint source pollution - funds for farms seeking MAEAP verification.
- (c) Considerations for reverification of a farm with revoked MAEAP verification status.
- (d) Integration of the MAEAP into pollution prevention activities of both agencies.
- (e) Clarification of the consultation process in part 88 to ensure that the department of agriculture and rural development has meaningful input into the establishment of the grants program and the issuance of grants.

Sec. 8713. (1) The director, in conjunction with the department of environmental quality and the department of community health, shall develop and establish priorities, procedures, and protocols for the implementation of a water quality monitoring program to do all of the following:

- (a) Provide general screening of groundwater or surface water, or both.
- (b) Determine the relative risk of groundwater contamination at different locations.
- (c) Perform envelope monitoring.

(2) The director shall, in a timely manner, notify affected well owners of their monitoring results from the monitoring conducted pursuant to this section, including the method detection limits and associated water resource protection levels.

(3) The monitoring program conducted pursuant to this section may provide for modifications of sampling density and analytes to reflect regional groundwater impact potential.

(4) The monitoring conducted pursuant to this section shall be conducted utilizing generally accepted scientific practices.

(5) The department shall establish a method detection limit goal for monitoring conducted pursuant to this section set at 10% of a compound's groundwater resource response level.

(6) Agencies conducting monitoring for pesticides or fertilizers pursuant to this section shall notify the director, on forms provided by or in a format approved by the director, of the location, procedure, and concentration of all pesticide detections or nitrate concentrations in excess of 10 parts per million. Information received by the director shall be evaluated based upon accepted protocols and procedures established under this part.

(7) The director shall establish by rule laboratory confirmation mechanisms used under this part.

(8) The director shall establish by rule risk assessment protocols for the development of groundwater resource protection levels.

Sec. 8713a. (1) The director, in consultation with the environmental assurance advisory council, may develop and establish priorities, procedures, and protocols for the implementation of a surface water quality monitoring program to do both of the following:

(a) Promote voluntary water quality monitoring by farms.

(b) Monitor and benchmark the effectiveness of conservation practices and MAEAP standards in cooperation with participating farmers.

(2) Water quality information collected under this section by the department in cooperation with farmers shall be aggregated and made available to the commission of agriculture and rural development. Specific locations or persons involved in water quality information collection are exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

Sec. 8714. (1) Upon confirmation of an adverse impact on groundwater, the director may, upon reasonable notice, require a person to furnish any information that the person may have relating to the identification, nature, and quantity of pesticides and fertilizers that are or have been used on a particular site and to current or past production practices

that may have impacted groundwater quality. This information shall be treated as confidential business information and is not subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(2) The director may, upon written request, authorize persons to land-apply materials contaminated with pesticides or fertilizers at agronomic rates. This authorization shall prescribe appropriate operational control activities to protect the application location and shall identify both the location of remediation and the location or locations where such a land application will take place.

Sec. 8715. (1) In addition to the fees provided for in part 83, a registrant shall pay an annual groundwater protection fee for each product to be registered. The specialty pesticide groundwater protection fee is \$100.00 per product. Groundwater protection fees for all other pesticides are 0.75% of the wholesale value of the previous registration year's product sales for use in this state, with a \$150.00 minimum groundwater protection fee. The minimum groundwater protection fee is due in the office of the director before July 1. A sales based groundwater protection fee greater than the \$150.00 minimum is due in the office of the director before October 1 of the following registration year.

(2) An additional late fee of \$100.00 shall be paid by the registrant for each pesticide if the pesticide registration is a renewal registration and the minimum groundwater protection fee is received by the department after June 30.

(3) A person required to pay a specialty fertilizer or soil conditioner registration fee under section 8505 shall pay an additional \$100.00 groundwater protection fee for each brand and product name of each grade registered.

(4) All fertilizer manufacturers or distributors licensed under part 85, except specialty fertilizer and soil conditioner registrants, shall pay an additional groundwater protection fee of 1-1/2 cents per percent of nitrogen in the fertilizer for each ton of fertilizer sold.

(5) The fees collected under this part, including any interest or dividends earned, shall be transmitted to the state treasurer, who shall credit the money received to the fund.

(6) Upon the expenditure or appropriation of money raised in this section for any purpose other than those specifically listed in this part, authorization to collect fees in this section shall be suspended until the money expended or appropriated for purposes other than those listed in this part are returned to the fund.

(7) This section is repealed December 31, 2015.

Sec. 8716. (1) The freshwater protection fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the fund, including general fund general purpose appropriations, gifts, grants, and bequests. The director shall annually seek matching general fund general purpose appropriations in amounts equal to the groundwater protection fees collected under section 8715 that are deposited into the fund pursuant to this part. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

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

(4) The department shall be the administrator of the fund for auditing purposes.

(5) The department shall expend money from the fund, upon appropriation, only for 1 or more of the following purposes:

(a) Direct assistance.

(b) Indirect assistance.

(c) Emergency response and removal of potential sources of water contamination. Expenditures pursuant to this subdivision shall not exceed \$15,000.00 per location.

(d) Natural resources protection.

(e) Administrative costs. Expenditures pursuant to this subdivision shall not exceed 20% of the annual appropriations from the fund.

(6) The department shall establish criteria and procedures for approving proposed expenditures from the fund.

(7) Notwithstanding section 8715, if at the close of any fiscal year the amount of money in the fund exceeds \$3,500,000.00, the department shall not collect a groundwater protection fee for the following year. After the groundwater protection fees have been suspended under this subsection, the fees shall only be reinstated if, at the close of any succeeding fiscal year, the amount of money in the fund is less than \$1,000,000.00.

(8) The department of treasury shall, before November 1 of each year, notify the department of the balance in the fund at the close of the preceding fiscal year.

(9) As used in this section:

(a) "Administrative costs" includes, but is not limited to, costs incurred during any of the following:

(i) Groundwater monitoring for pesticides and fertilizers.

(ii) Development and enforcement of natural resources protection rules.

(iii) Coordination of programs under this part with the United States environmental protection agency and other state programs with environmental protection responsibilities.

(iv) Management of pesticide sales information.

(b) "Direct assistance" includes, but is not limited to, programs that will provide for any of the following:

(i) Provision of alternate noncommunity water supplies.

(ii) Closure of wells that may impact groundwater, such as abandoned, improperly constructed, or drainage wells.

(iii) The environmentally sound disposal or recycling of specialty pesticide containers.

(iv) The environmentally sound disposal or recycling of nonspecialty pesticide containers.

(v) Specialty and nonspecialty pesticide disposal programs.

(vi) Programs devoted to integrated natural resources conservation that encourage the judicious use of pesticides and fertilizers and other agricultural inputs and practices that are protective of water quality through targeted systems approach to management decisions.

(vii) Incentive and cost share programs to assist farmers in achieving MAEAP standards.

(viii) Incentive and cost share programs for MAEAP-verified farms with potential sources of contamination on their property.

(ix) Monitoring of private well water for pesticides, fertilizers, and other contaminants.

(x) Removal of soils and waters contaminated by pesticides and fertilizers and the land application of those materials at agronomic rates.

(xi) MAEAP grants pursuant to section 8710.

(xii) Programs that enhance investment of private and federal funds in conservation.

(xiii) Verification.

(xiv) Other programs established pursuant to this part.

(c) "Indirect assistance" includes, but is not limited to, programs that will provide for any of the following:

(i) Public education and demonstration programs on specialty pesticide container recycling and environmentally sound disposal methods.

(ii) Educational programs.

(iii) Technical assistance programs.

(iv) The promotion and implementation of on-site evaluation systems, conservation practices, and the MAEAP.

(v) Research programs for determination of the impacts of alternate management practices.

(vi) Research program for determination of natural resources sensitivity and vulnerability to contamination.

Enacting section 1. This amendatory act does not take effect unless Senate Bill No. 122 of the 96th Legislature is enacted into law.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

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Governor