

HOUSE BILL No. 4213

February 9, 2011, Introduced by Reps. Outman, Daley, Johnson, McBroom, Lyons, Price, Rendon, Denby, Pscholka, Tyler, Glardon, Horn, Damrow, Bumstead, Heise, Kurtz, Haveman, Shirkey, Muxlow, Potvin, Lori and Hughes and referred to the Committee on Agriculture.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 8801, 8802, 8805, 8806, and 8807 (MCL
324.8801, 324.8802, 324.8805, 324.8806, and 324.8807), as added by
1998 PA 287, and by adding section 3109d.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 3109D. (1) BEGINNING 6 MONTHS AFTER THE EFFECTIVE DATE OF
2 THE AMENDATORY ACT THAT ADDED THIS SECTION, NOTWITHSTANDING ANY
3 OTHER PROVISION OF THIS PART, THE FOLLOWING APPLY TO MAEAP-VERIFIED
4 FARMS:

5 (A) EXCEPT AS PROVIDED IN SUBDIVISION (B), IF ALL OF THE
6 FOLLOWING CONDITIONS ARE MET, THE OWNER OR OPERATOR OF THE MAEAP-
7 VERIFIED FARM IS NOT SUBJECT TO CIVIL FINES UNDER SECTION 3115, BUT
8 MAY BE RESPONSIBLE FOR ACTUAL NATURAL RESOURCES DAMAGES:

1 (i) A DISCHARGE TO THE WATERS OF THE STATE OCCURS FROM A
2 PORTION OR OPERATION OF THE FARM THAT IS MAEAP-VERIFIED.

3 (ii) THE DISCHARGE WAS NOT INTENTIONAL.

4 (iii) THE OWNER OR OPERATOR ACTED PROMPTLY TO CORRECT THE
5 CONDITION AFTER DISCOVERY.

6 (iv) THE OWNER OR OPERATOR REPORTED THE DISCHARGE TO THE
7 DEPARTMENT WITHIN 24 HOURS OF THE DISCOVERY.

8 (B) SUBDIVISION (A) DOES NOT APPLY IF EITHER OF THE FOLLOWING
9 CONDITIONS OCCURS:

10 (i) THE ACTIONS OF THE OWNER OR OPERATOR POSE OR POSED A
11 SUBSTANTIAL ENDANGERMENT TO THE PUBLIC HEALTH, SAFETY, OR WELFARE.

12 (ii) THE OWNER OR OPERATOR HAS PREVIOUSLY COMMITTED SIGNIFICANT
13 VIOLATIONS THAT CONSTITUTE A PATTERN OF CONTINUOUS OR REPEATED
14 VIOLATIONS OF ENVIRONMENTAL LAWS, RULES, REGULATIONS, PERMIT
15 CONDITIONS, SETTLEMENT AGREEMENTS, OR ORDERS OF CONSENT OR JUDICIAL
16 ORDERS AND THAT WERE DUE TO SEPARATE AND DISTINCT EVENTS.

17 (C) IF A MAEAP-VERIFIED FARM IS IN COMPLIANCE WITH ALL MAEAP
18 STANDARDS APPLICABLE TO THE FARMING OPERATION, THE FARM IS
19 CONSIDERED TO BE IMPLEMENTING CONSERVATION AND MANAGEMENT PRACTICES
20 NEEDED TO MEET TOTAL MAXIMUM DAILY LOAD IMPLEMENTATION FOR IMPAIRED
21 WATERS PURSUANT TO 33 USC 1313.

22 (D) IF A DISCHARGE FROM A MAEAP-VERIFIED FARM THAT IS IN
23 COMPLIANCE WITH ALL MAEAP STANDARDS APPLICABLE TO LAND APPLICATION
24 IS CAUSED BY AN ACT OF GOD WEATHER EVENT, BOTH OF THE FOLLOWING
25 APPLY:

26 (i) THE DISCHARGE SHALL BE CONSIDERED NONPOINT SOURCE
27 POLLUTION.

1 (ii) IF THE DISCHARGE IS DETERMINED BY THE DIRECTOR WITH
2 SCIENTIFIC EVIDENCE PROVIDED BY WATER QUALITY DATA TO HAVE CAUSED
3 AN EXCEEDANCE OF WATER QUALITY STANDARDS, THE FARM, WITHIN 30 DAYS
4 OF NOTIFICATION, SHALL PROVIDE TO THE DEPARTMENT A REPORT THAT
5 INCLUDES DETAILS OF CONSERVATION OR MANAGEMENT PRACTICE CHANGES, IF
6 NECESSARY, TO FURTHER ADDRESS THE RISK OF DISCHARGE RECURRENCE. THE
7 REPORT SHALL STATE WHETHER THOSE CONSERVATION OR MANAGEMENT
8 PRACTICES HAVE ALREADY BEEN IMPLEMENTED BY THE FARM. UPON RECEIPT
9 OF THE REPORT, THE DEPARTMENT SHALL REVIEW THE REPORT AND RESPOND
10 WITHIN 30 DAYS. THE DEPARTMENTAL RESPONSE MAY INCLUDE REPORT
11 ACCEPTANCE WITH NO FURTHER ACTION REQUIRED OR MAY RECOMMEND
12 ENVIRONMENTALLY SOUND AND ECONOMICALLY FEASIBLE CONSERVATION OR
13 MANAGEMENT PRACTICES TO PREVENT FUTURE DISCHARGES.

14 (2) THIS SECTION DOES NOT MODIFY OR LIMIT ANY OBLIGATION TO
15 OBTAIN A PERMIT UNDER THIS PART.

16 (3) AS USED IN THIS SECTION:

17 (A) "ACT OF GOD WEATHER EVENT" MEANS A PRECIPITATION EVENT
18 THAT MEETS BOTH OF THE FOLLOWING CONDITIONS:

19 (i) EXCEEDS 1/2 INCH IN PRECIPITATION.

20 (ii) WAS FORECAST BY THE NATIONAL WEATHER SERVICE 24 HOURS
21 EARLIER AS HAVING LESS THAN A 70% PROBABILITY OF EXCEEDING 1/2 INCH
22 OF PRECIPITATION.

23 (B) "MAEAP-VERIFIED FARM" MEANS THAT TERM AS IT IS DEFINED IN
24 PART 87.

25 Sec. 8801. As used in this part:

26 (a) "Department" means the department of environmental
27 quality.

(b) "Director" means the director of the department.

(c) "Fund" means the clean water fund created in section 8807.

(d) "Grant" means a nonpoint source pollution prevention and control grant or a wellhead protection grant under this part.

(e) "Local unit of government" means a county, city, village, or township, or an agency of a county, city, village, or township; the office of a county drain commissioner; a soil conservation district established under part 93; a watershed council; a local health department as defined in section 1105 of the public health code, 1978 PA 368, MCL 333.1105; or an authority or any other public body created by or pursuant to state law.

(F) "MAEAP" MEANS THE MICHIGAN AGRICULTURE ENVIRONMENTAL ASSURANCE PROGRAM AS THAT TERM IS DEFINED IN PART 87.

(G) "MAEAP-VERIFIED FARM" MEANS THAT TERM AS IT IS DEFINED IN PART 87.

(H) ~~(F)~~—"Nonpoint source pollution" means water pollution from diffuse sources, including runoff from precipitation or snowmelt contaminated through contact with pollutants in the soil or on other surfaces and either infiltrating into the groundwater or being discharged to surface waters, or runoff or wind causing erosion of soil into surface waters.

Sec. 8802. (1) The department, in consultation with the department of agriculture **AND RURAL DEVELOPMENT**, shall establish a grants program to provide grants for nonpoint source pollution prevention and control projects and wellhead protection projects. The grants program shall provide grants to local units of government or entities that are exempt from taxation under section

1 501(c)(3) of the internal revenue code.

2 (2) The nonpoint source pollution prevention and control
3 grants issued under this part shall be provided for projects that
4 do ~~either or both~~ **1 OR MORE** of the following:

5 (a) Implement the physical improvement portion of watershed
6 plans that are approved by the department.

7 (b) Reduce specific nonpoint source pollution as identified by
8 the department.

9 **(C) PROMOTE MAEAP VERIFICATION.**

10 (3) The wellhead protection grants issued under this part
11 shall be provided for projects that are consistent with a wellhead
12 protection plan approved by the department and that do any of the
13 following:

14 (a) Plug abandoned wells.

15 (b) Provide for the purchase of land or the purchase of rights
16 in land to protect aquifer recharge areas.

17 (c) Implement the physical improvement portion of the wellhead
18 protection plan.

19 (4) For any grant issued under this part, a local unit of
20 government shall contribute at least 25% of the project's total
21 cost from other public or private funding sources. The department
22 may approve in-kind services to meet all or a portion of the match
23 requirement under this subsection. In addition, the department may
24 accept as the match requirement under this subsection a contract
25 between the grant applicant and the department that provides for
26 maintenance of the project or practices that are funded under terms
27 acceptable to the department. The contract shall require

1 maintenance of the project or practices throughout the period of
2 time in which the state is paying off the bonds that were issued
3 pursuant to the clean Michigan initiative act to implement this
4 part.

5 (5) IN ISSUING GRANTS UNDER THIS SECTION, THE DEPARTMENT, IN
6 CONSULTATION WITH THE DEPARTMENT OF AGRICULTURE AND RURAL
7 DEVELOPMENT, SHALL SELECT PROJECTS THAT, TO THE EXTENT PRACTICABLE,
8 PROVIDE MAXIMUM BENEFIT TO THE STATE IN PROTECTING PUBLIC HEALTH
9 AND THE ENVIRONMENT AND CONTRIBUTING TO ECONOMIC DEVELOPMENT.

10 Sec. 8805. Upon receipt of a grant application pursuant to
11 section 8804, the department, IN CONSULTATION WITH THE DEPARTMENT
12 OF AGRICULTURE AND RURAL DEVELOPMENT, shall consider the projects
13 proposed to be funded and the extent that money is available for
14 grants under this part, and shall issue grants for projects that
15 the department determines will assist in the prevention or control
16 of pollution from nonpoint sources or will provide for wellhead
17 protection.

18 Sec. 8806. Grants made under this part are subject to the
19 applicable requirements of part 196. The department, IN
20 CONSULTATION WITH THE DEPARTMENT OF AGRICULTURE AND RURAL
21 DEVELOPMENT, shall administer this part in compliance with the
22 applicable requirements of part 196, including the reporting
23 requirements to the legislature of the grants provided under this
24 part.

25 Sec. 8807. (1) The clean water fund is created within the
26 state treasury.

27 (2) The state treasurer may receive money or other assets from

any source for deposit into the fund. 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) Except as otherwise provided in this section, the department, **IN CONSULTATION WITH THE DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT**, shall expend money in the fund, upon appropriation, for any of the following:

(a) To implement the programs described in the department's document entitled "A strategic environmental quality monitoring program for Michigan's surface waters", dated January 1997. In implementing these programs, the department may contract with any person.

(b) Water pollution control activities.

(C) PROMOTION OF MAEAP AND ACTIVITIES TO ENCOURAGE MORE MAEAP-VERIFIED FARMS.

(D) ~~(e)~~ Wellhead protection activities.

(E) ~~(d)~~ Storm water treatment projects and activities.

(5) Money in the fund shall not be expended for combined sewer overflow corrections.

~~— (6) The first priority for expenditure of money in the fund shall be for the programs described in subsection (4)(a).~~

(6) ~~(7)~~ Money in the fund shall not be expended until rules are promulgated under section 8808.

Enacting section 1. This amendatory act does not take effect unless Senate Bill No. ____ or House Bill No. ____ (request no.

1 00047'11 **) of the 96th Legislature is enacted into law.