

SENATE BILL No. 72

January 26, 2011, Introduced by Senators ANDERSON and HOPGOOD and referred to the Committee on Agriculture.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," (MCL 324.101 to 324.90106) by adding part 86.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

PART 86. AGRICULTURE

SEC. 8601. AS USED IN THIS PART:

(A) "ANIMAL FEEDING OPERATION" OR "AFO" MEANS A LOT OR FACILITY, OTHER THAN AN AQUACULTURE FACILITY REGISTERED UNDER THE MICHIGAN AQUACULTURE DEVELOPMENT ACT, 1996 PA 199, MCL 286.871 TO 286.884, WHERE ANIMALS HAVE BEEN, ARE, OR WILL BE STABLED OR CONFINED AND FED OR MAINTAINED FOR A TOTAL OF 45 DAYS OR MORE IN ANY 12-MONTH PERIOD. AFO DOES NOT INCLUDE A LOT OR FACILITY IF CROPS, VEGETATION, FORAGE GROWTH, OR POST-HARVEST RESIDUES ARE SUSTAINED OVER ANY PORTION OF THE LOT OR FACILITY IN THE NORMAL

1 GROWING SEASON.

2 (B) "ANIMAL WASTE HANDLER" MEANS A COMMERCIAL ANIMAL WASTE
3 HANDLER OR A PRIMARY ANIMAL WASTE HANDLER.

4 (C) "COMMERCIAL ANIMAL WASTE HANDLER" MEANS A PERSON WHO, FOR
5 CONSIDERATION, HANDLES OR DISPOSES OF OR OFFERS TO HANDLE OR
6 DISPOSE OF MANURE, PRODUCTION AREA WASTE, OR PROCESS WASTEWATER
7 FROM AN ANIMAL FEEDING OPERATION OWNED OR OPERATED BY ANOTHER
8 PERSON.

9 (D) "CONCENTRATED ANIMAL FEEDING OPERATION" OR "CAFO" MEANS A
10 LARGE CAFO, MEDIUM CAFO, OR SMALL CAFO. FOR THE PURPOSES OF
11 DETERMINING THE NUMBER OF ANIMALS AT AN OPERATION, 2 OR MORE AFOS
12 UNDER COMMON OWNERSHIP ARE CONSIDERED TO BE A SINGLE AFO IF THEY
13 ADJOIN EACH OTHER OR IF THEY USE A COMMON AREA OR SYSTEM FOR THE
14 DISPOSAL OF WASTES.

15 (E) "DEPARTMENT" MEANS THE DIRECTOR OF THE DEPARTMENT OF
16 NATURAL RESOURCES AND ENVIRONMENT OR HIS OR HER DESIGNEE TO WHOM
17 THE DIRECTOR DELEGATES A POWER OR DUTY BY WRITTEN INSTRUMENT.

18 (F) "FUND" MEANS THE CAFO CLEANUP AND ENFORCEMENT FUND CREATED
19 IN SECTION 8604.

20 (G) "LAND APPLICATION AREA" MEANS LAND UNDER THE CONTROL OF AN
21 AFO OWNER OR OPERATOR, WHETHER IT IS OWNED, RENTED, LEASED, OR
22 SUBJECT TO AN ACCESS AGREEMENT, TO WHICH PRODUCTION AREA WASTE OR
23 PROCESS WASTEWATER IS OR MAY BE APPLIED. LAND APPLICATION AREA
24 INCLUDES LAND NOT OWNED BY THE AFO OWNER OR OPERATOR BUT ON WHICH
25 THE AFO OWNER OR OPERATOR HAS CONTROL OF THE LAND APPLICATION OF
26 PRODUCTION AREA WASTE OR CAFO PROCESS WASTEWATER.

27 (H) "MANURE" INCLUDES MANURE, BEDDING, COMPOST, AND RAW

1 MATERIALS OR OTHER MATERIALS COMMINGLED WITH MANURE OR SET ASIDE
2 FOR DISPOSAL.

3 (I) "PRIMARY ANIMAL WASTE HANDLER" MEANS THE INDIVIDUAL
4 DESIGNATED AS BEING PRIMARILY RESPONSIBLE FOR THE HANDLING OF
5 MANURE, PRODUCTION AREA WASTE, OR PROCESS WASTEWATER UNDER SECTION
6 8602.

7 (J) "PROCESS WASTEWATER" MEANS ANY OF THE FOLLOWING:

8 (i) SPILLAGE OR OVERFLOW OF WATER USED FOR CAFO ANIMAL OR
9 POULTRY WATERING SYSTEMS.

10 (ii) WATER DIRECTLY OR INDIRECTLY USED AT A CAFO FOR WASHING,
11 CLEANING, OR FLUSHING PENS, BARNs, MANURE PITS, OR OTHER
12 FACILITIES; FOR DIRECT CONTACT SWIMMING, WASHING, OR SPRAY COOLING
13 OF ANIMALS; OR FOR DUST CONTROL.

14 (iii) ANY WATER THAT COMES INTO CONTACT WITH, OR IS A
15 CONSTITUENT OF, ANY CAFO RAW MATERIALS, PRODUCTS, OR BYPRODUCTS,
16 INCLUDING MANURE, LITTER, FEED, MILK, EGGS, OR BEDDING.

17 (K) "PRODUCTION AREA" MEANS THAT PART OF AN AFO THAT INCLUDES
18 ANIMAL CONFINEMENT AREA, MANURE STORAGE AREA, RAW MATERIALS STORAGE
19 AREA, WASTE CONTAINMENT AREAS, ANY EGG WASHING OR EGG PROCESSING
20 FACILITY, AND ANY AREA USED IN THE STORAGE, HANDLING, TREATMENT, OR
21 DISPOSAL OF MORTALITIES. AS USED IN THIS SUBDIVISION:

22 (i) "ANIMAL CONFINEMENT AREA" INCLUDES OPEN LOTS, HOUSED LOTS,
23 FEEDLOTS, CONFINEMENT HOUSES, STALL BARNs, FREE STALL BARNs, MILK
24 ROOMS, MILKING CENTERS, COWYARDS, BARNYARDS, MEDICATION PENS,
25 WALKERS, ANIMAL WALKWAYS, AND STABLES.

26 (ii) "MANURE STORAGE AREA" INCLUDES LAGOONS, RUNOFF PONDS,
27 STORAGE SHEDS, STOCKPILES, UNDERHOUSE OR PIT STORAGEs, LIQUID

1 IMPOUNDMENTS, STATIC PILES, AND COMPOSTING PILES.

2 (iii) "RAW MATERIALS STORAGE AREA" INCLUDES FEED SILOS, SILAGE
3 BUNKERS, AND BEDDING MATERIALS.

4 (iv) "WASTE CONTAINMENT AREA" INCLUDES SETTLING BASINS AND
5 AREAS WITHIN BERMS AND DIVERSIONS THAT SEPARATE UNCONTAMINATED
6 STORM WATER.

7 (l) "PRODUCTION AREA WASTE" MEANS MANURE OR ANY WASTE FROM THE
8 PRODUCTION AREA AND ANY PRECIPITATION, INCLUDING, BUT NOT LIMITED
9 TO, RAIN OR SNOW, THAT COMES INTO CONTACT WITH, OR IS CONTAMINATED
10 BY, MANURE OR ANY OF THE COMPONENTS LISTED IN THE DEFINITION OF
11 PRODUCTION AREA. PRODUCTION AREA WASTE DOES NOT INCLUDE WATER FROM
12 LAND APPLICATION AREAS.

13 (M) "STORM WATER" MEANS STORM WATER RUNOFF, SNOWMELT RUNOFF,
14 AND SURFACE RUNOFF AND DRAINAGE.

15 (N) "WASTEWATER" MEANS LIQUID WASTE DISCHARGED DIRECTLY OR
16 INDIRECTLY INTO THE WATERS OF THE STATE THAT RESULTS FROM
17 INDUSTRIAL AND COMMERCIAL PROCESSES AND MUNICIPAL OPERATIONS,
18 INCLUDING LIQUID OR WATER-CARRIED PROCESS WASTE, COOLING AND
19 CONDENSING WATERS, AND SANITARY SEWAGE.

20 SEC. 8602. (1) BEGINNING 180 DAYS AFTER THE EFFECTIVE DATE OF
21 THE RULES PROMULGATED UNDER SUBSECTION (2), A COMMERCIAL ANIMAL
22 WASTE HANDLER OR A PRIMARY ANIMAL WASTE HANDLER SHALL NOT HANDLE
23 MANURE, PRODUCTION AREA WASTE, OR PROCESS WASTEWATER AT AN AFO
24 UNLESS THE PERSON OBTAINS A LICENSE UNDER THIS SECTION.

25 (2) WITHIN 1 YEAR AFTER THE EFFECTIVE DATE OF THE AMENDATORY
26 ACT THAT ADDED THIS SECTION, THE DEPARTMENT SHALL PROMULGATE RULES
27 FOR THE LICENSING OF ANIMAL WASTE HANDLERS. THE RULES MAY PROVIDE

1 FOR SEPARATE LICENSING CATEGORIES AND REQUIREMENTS FOR COMMERCIAL
2 ANIMAL WASTE HANDLERS AND PRIMARY ANIMAL WASTE HANDLERS. THE RULES
3 SHALL PROVIDE FOR ALL OF THE FOLLOWING:

4 (A) LICENSE TERMS OF NOT LESS THAN 3 YEARS.

5 (B) TRAINING AND EDUCATION STANDARDS FOR INITIAL LICENSING FOR
6 ANIMAL WASTE HANDLERS AND CONTINUED EDUCATION OR CONTINUED
7 COMPETENCY TRAINING FOR RENEWAL LICENSING. THE DEPARTMENT MAY
8 PROVIDE BY RULE FOR A WAIVER OF THE EDUCATION AND TRAINING
9 REQUIREMENTS FOR PERSONS WHO, ON THE EFFECTIVE DATE OF THE RULES,
10 ARE ENGAGED IN HANDLING MANURE AT A CAFO AND CAN DEMONSTRATE A
11 COMBINATION OF TRAINING, EDUCATION, AND EXPERIENCE SUBSTANTIALLY
12 EQUIVALENT TO THE REQUIREMENTS IMPOSED UNDER THE RULES.

13 (C) A PROCESS FOR PHASING IN THE LICENSING REQUIREMENTS FOR
14 PERSONS OPERATING AS ANIMAL WASTE HANDLERS ON THE EFFECTIVE DATE OF
15 THE AMENDATORY ACT THAT ADDED THIS SECTION. THE PHASE-IN PERIOD
16 SHALL CONCLUDE NOT EARLIER THAN 1 YEAR AFTER THE EFFECTIVE DATE OF
17 RULES PROMULGATED UNDER THIS SECTION.

18 (3) IN ESTABLISHING STANDARDS UNDER SUBSECTION (2), THE
19 DEPARTMENT MAY INCORPORATE BY REFERENCE EXISTING STANDARDS ADOPTED
20 BY THE FEDERAL GOVERNMENT OR EXISTING STANDARDS ADOPTED BY TRADE OR
21 INDUSTRY GROUPS.

22 (4) AS A CONDITION OF LICENSURE UNDER THIS SECTION, A LICENSEE
23 SHALL MAINTAIN A BOND IN AN AMOUNT NOT LESS THAN \$25,000.00. THE
24 BOND SHALL BE EXECUTED BY THE LICENSEE AS PRINCIPAL AND ISSUED BY A
25 CORPORATION QUALIFIED UNDER THE LAWS OF THIS STATE AS SURETY,
26 PAYABLE TO THE STATE OF MICHIGAN, AND CONDITIONED UPON COMPLIANCE
27 WITH STATE AND FEDERAL LAWS, RULES, AND REGULATIONS APPLICABLE TO

1 THE LICENSEE.

2 (5) THE FEE FOR AN ANIMAL WASTE HANDLER LICENSE IS \$200.00 PER
3 YEAR. IF AN ANNUAL FEE IS PAID FOR AN ANIMAL WASTE HANDLER LICENSE,
4 BUT THE APPLICATION FOR THE LICENSE IS DENIED, THE DEPARTMENT SHALL
5 PROMPTLY REFUND THE FEE. FOR EACH STATE FISCAL YEAR, A PERSON
6 POSSESSING AN ANIMAL WASTE HANDLER LICENSE AS OF JANUARY 1 OF THAT
7 FISCAL YEAR SHALL BE ASSESSED THE \$200.00 ANNUAL FEE. THE
8 DEPARTMENT SHALL NOTIFY THOSE PERSONS OF THEIR FEE ASSESSMENTS BY
9 FEBRUARY 1 OF THAT FISCAL YEAR. PAYMENT SHALL BE POSTMARKED BY
10 MARCH 15 OF THAT FISCAL YEAR.

11 (6) THE DEPARTMENT SHALL ASSESS INTEREST ON ALL ANIMAL WASTE
12 HANDLER LICENSE FEE PAYMENTS RECEIVED AFTER THE DUE DATE. THE
13 AMOUNT OF INTEREST SHALL EQUAL 0.75% OF THE PAYMENT DUE, FOR EACH
14 MONTH OR PORTION OF A MONTH THE PAYMENT REMAINS PAST DUE. THE
15 FAILURE BY A PERSON TO TIMELY PAY A FEE IMPOSED BY THIS SECTION IS
16 A VIOLATION OF THIS PART.

17 (7) IF A PERSON FAILS TO PAY A FEE REQUIRED UNDER THIS SECTION
18 IN FULL, PLUS ANY INTEREST ACCRUED, BY OCTOBER 1 OF THE YEAR
19 FOLLOWING THE DATE OF NOTIFICATION OF THE FEE ASSESSMENT, THE
20 DEPARTMENT MAY ISSUE AN ORDER THAT REVOKES THE PERSON'S ANIMAL
21 WASTE HANDLER LICENSE. FEES AND INTEREST COLLECTED UNDER THIS
22 SECTION SHALL BE DEPOSITED IN THE FUND.

23 (8) EACH CAFO SHALL DESIGNATE AN INDIVIDUAL LICENSED UNDER
24 THIS SECTION TO BE PRIMARILY RESPONSIBLE FOR THE HANDLING OF
25 MANURE, PRODUCTION AREA WASTE, AND PROCESS WASTEWATER. AN
26 INDIVIDUAL LICENSED AS A COMMERCIAL ANIMAL WASTE HANDLER MAY ACT AS
27 A PRIMARY ANIMAL WASTE HANDLER WITHOUT OBTAINING A SEPARATE LICENSE

1 AS A PRIMARY ANIMAL WASTE HANDLER.

2 (9) THE DEPARTMENT MAY SUSPEND OR REVOKE AN ANIMAL WASTE
3 HANDLER LICENSE IF THE DEPARTMENT, AFTER NOTICE AND OPPORTUNITY FOR
4 AN ADMINISTRATIVE HEARING, DETERMINES THAT THE LICENSEE VIOLATED
5 THIS PART OR RULES PROMULGATED UNDER THIS PART.

6 SEC. 8603. (1) IF PRODUCTION AREA WASTE OR PROCESS WASTEWATER
7 IS SOLD, GIVEN AWAY, OR OTHERWISE TRANSFERRED TO OTHER PERSONS AND
8 THE LAND APPLICATION OF THAT PRODUCTION AREA WASTE OR PROCESS
9 WASTEWATER IS NOT UNDER THE OPERATIONAL CONTROL OF THE CAFO OWNER
10 OR OPERATOR THAT GENERATES THE PRODUCTION AREA WASTE OR PROCESS
11 WASTEWATER, THE CAFO OWNER OR OPERATOR SHALL DO ALL OF THE
12 FOLLOWING:

13 (A) PREPARE A MANIFEST FOR TRACKING THE PRODUCTION AREA WASTE
14 OR PROCESS WASTEWATER BEFORE TRANSFERRING THE PRODUCTION AREA WASTE
15 OR PROCESS WASTEWATER.

16 (B) DESIGNATE ON THE MANIFEST THE RECIPIENT OF THE PRODUCTION
17 AREA WASTE OR PROCESS WASTEWATER.

18 (C) USE A MANIFEST FORM THAT IS APPROVED BY THE DEPARTMENT AND
19 HAS LOCATIONS FOR RECORDING ALL OF THE FOLLOWING INFORMATION:

20 (i) A MANIFEST DOCUMENT NUMBER.

21 (ii) THE GENERATOR'S NAME, MAILING ADDRESS, AND TELEPHONE
22 NUMBER.

23 (iii) THE NAME AND ADDRESS OF THE RECIPIENT OF THE PRODUCTION
24 AREA WASTE OR PROCESS WASTEWATER.

25 (iv) THE NUTRIENT CONTENT OF THE PRODUCTION AREA WASTE OR
26 PROCESS WASTEWATER TO BE USED IN DETERMINING THE APPROPRIATE LAND
27 APPLICATION RATES.

1 (v) THE TOTAL QUANTITY OF PRODUCTION AREA WASTE OR PROCESS
2 WASTEWATER BY UNITS OF WEIGHT OR VOLUME AND THE NUMBER AND SIZE OF
3 THE LOADS OR CONTAINERS USED TO TRANSFER THAT QUANTITY OF
4 PRODUCTION AREA WASTE OR PROCESS WASTEWATER.

5 (vi) A STATEMENT THAT INFORMS THE RECIPIENT OF HIS OR HER
6 RESPONSIBILITY TO PROPERLY MANAGE THE LAND APPLICATION OF THE
7 MANURE OR WASTEWATER TO MINIMIZE THE DISCHARGE OF POLLUTANTS TO
8 WATERS OF THE STATE.

9 (vii) THE FOLLOWING CERTIFICATION: "I CERTIFY THAT THE
10 PRODUCTION AREA WASTE OR PROCESS WASTEWATER IS ACCURATELY DESCRIBED
11 ABOVE AND IS SUITABLE FOR LAND APPLICATION."

12 (viii) OTHER CERTIFICATION STATEMENTS AS MAY BE REQUIRED BY THE
13 DEPARTMENT.

14 (ix) THE ADDRESS OR OTHER DESCRIPTION OF THE FINAL DESTINATION
15 OF THE PRODUCTION AREA WASTE OR PROCESS WASTEWATER, FOR COMPLETION
16 BY THE RECIPIENT AFTER LAND APPLICATION OR OTHER DISPOSAL OR USE OF
17 THE PRODUCTION AREA WASTE OR PROCESS WASTEWATER.

18 (x) DATES AND SIGNATURES OF THE GENERATOR AND RECIPIENT.

19 (D) SIGN THE MANIFEST CERTIFICATION BY HAND.

20 (E) OBTAIN THE HANDWRITTEN SIGNATURE OF THE RECIPIENT AND THE
21 DATE OF ACCEPTANCE ON THE MANIFEST.

22 (F) RETAIN 1 COPY OF THE MANIFEST.

23 (G) GIVE THE REMAINING COPIES OF THE MANIFEST TO THE
24 RECIPIENT.

25 (H) ADVISE THE RECIPIENT OF HIS OR HER RESPONSIBILITIES TO
26 COMPLETE THE MANIFEST AND RETURN A COPY TO THE GENERATOR WITHIN 30
27 DAYS AFTER COMPLETION OF THE LAND APPLICATION OR OTHER DISPOSAL OR

1 USE OF THE PRODUCTION AREA WASTE OR PROCESS WASTEWATER.

2 (I) KEEP ALL COPIES OF MANIFESTS WITH THE CAFO OWNER'S OR
3 OPERATOR'S CONCENTRATED NUTRIENT MANAGEMENT PLAN FOR 3 YEARS.

4 (J) MAKE COPIES OF THE MANIFESTS AVAILABLE TO THE DEPARTMENT
5 OR THE DEPARTMENT OF AGRICULTURE FOR INSPECTION OR COPYING UPON
6 REQUEST. MANIFESTS ARE EXEMPT FROM DISCLOSURE UNDER THE FREEDOM OF
7 INFORMATION ACT, 1976 PA 442, MCL 15.231 TO 15.246.

8 (2) SUBSECTION (1) DOES NOT APPLY TO QUANTITIES OF PRODUCTION
9 AREA WASTE OR PROCESS WASTEWATER LESS THAN 1 CUBIC YARD OR 1 TON
10 PER RECIPIENT PER DAY.

11 (3) ONE MANIFEST MAY BE USED FOR MULTIPLE LOADS OR CONTAINERS
12 OF THE SAME PRODUCTION AREA WASTE OR PROCESS WASTEWATER TRANSFERRED
13 IN 1 CALENDAR DAY TO THE SAME DESTINATION.

14 (4) THE GENERATOR SHALL NOT SELL, GIVE AWAY, OR OTHERWISE
15 TRANSFER PRODUCTION AREA WASTE OR PROCESS WASTEWATER TO A RECIPIENT
16 IF ANY OF THE FOLLOWING OCCUR:

17 (A) THE RECIPIENT HAS PREVIOUSLY NOT RETURNED A COPY OF A
18 COMPLETED MANIFEST TO THE GENERATOR WITHIN THE PERIOD REQUIRED BY
19 SUBSECTION (1) (H) .

20 (B) A MANIFEST RETURNED BY THE RECIPIENT INDICATES IMPROPER
21 LAND APPLICATION, USE, OR DISPOSAL.

22 (C) THE GENERATOR HAS BEEN ADVISED BY THE DEPARTMENT THAT THE
23 DEPARTMENT OR A COURT OF APPROPRIATE JURISDICTION HAS DETERMINED
24 THAT THE RECIPIENT HAS IMPROPERLY LAND-APPLIED, USED, OR DISPOSED
25 OF MANIFESTED PRODUCTION AREA WASTE OR PROCESS WASTEWATER.

26 SEC. 8604. (1) THE CAFO CLEANUP AND ENFORCEMENT FUND IS
27 CREATED WITHIN THE STATE TREASURY.

1 (2) THE STATE TREASURER MAY RECEIVE MONEY OR OTHER ASSETS FROM
2 ANY OTHER SOURCE FOR DEPOSIT INTO THE FUND. THE STATE TREASURER
3 SHALL DIRECT THE INVESTMENT OF THE FUND. THE STATE TREASURER SHALL
4 CREDIT TO THE FUND INTEREST AND EARNINGS FROM FUND INVESTMENTS.

5 (3) MONEY IN THE FUND AT THE CLOSE OF THE FISCAL YEAR SHALL
6 REMAIN IN THE FUND AND SHALL NOT LAPSE TO THE GENERAL FUND.

7 (4) THE DEPARTMENT SHALL EXPEND MONEY FROM THE FUND, UPON
8 APPROPRIATION, ONLY FOR 1 OR MORE OF THE FOLLOWING PURPOSES:

9 (A) FOR CLEANUP AND REMEDIATION REQUIRED DUE TO DISCHARGES
10 FROM CAFOS.

11 (B) FOR ENFORCEMENT OF THIS PART OR PART 31 AGAINST OWNERS OR
12 OPERATORS OF CAFOS THAT ARE IN VIOLATION OF THIS PART OR PART 31.

13 (C) FOR THE COSTS OF THE DEVELOPMENT AND ISSUANCE OF PERMITS
14 UNDER PART 31 FOR CAFOS.