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BILL ANALYSIS



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Senate Bill 444 (as enacted)
Sponsor: Senator Tom Casperson
Senate Committee: Natural Resources, Environment and Great Lakes
House Committee: Natural Resources

PUBLIC ACT 253 of 2014

Date Completed: 8-4-15

CONTENT

The bill amended Part 33 (Aquatic Nuisance Control) of the Natural Resources and Environmental Protection Act to do the following:

- Advance a sunset on the application fee requirement for a certificate of coverage to chemically treat a body of water for aquatic nuisance control, from October 1, 2015, to October 1, 2014.
- Eliminate an October 1, 2015, sunset on the application fee requirement for an individual permit to chemically treat a body of water for aquatic nuisance control.
- Create the "Aquatic Nuisance Control Fund" and require the Department of Environmental Quality (DEQ) to spend Fund money, upon appropriation, for the administration of Part 33.
- Eliminate a requirement that fees collected under Part 33 be deposited in the Land and Water Management Permit Fee Fund, and require the DEQ to forward all of the fees for deposit into the Aquatic Nuisance Control Fund.
- Require the DEQ annually to set certificate and permit application fees to achieve a target of approximately \$900,000 in fee revenue, adjusted for inflation.
- Revise the time frame for the DEQ to process an application for a permit or certificate of coverage; and require an application to be considered approved under certain circumstances, if the DEQ fails to comply with the prescribed time frame.
- Prescribe a minimum permit or certificate term of three years, unless the applicant requests a shorter term; and require a permit to authorize chemical treatment in each year of its term.
- Require a permittee to pay an annual fee to the DEQ for the second and each subsequent year of a permit, and require suspension of a permit if the fee is not paid on time.
- Prohibit the DEQ from charging a fee for a request for permit revisions or for an amendment to an application; and require the DEQ to approve or deny a request for revisions within three business days after receiving it.
- Require the DEQ to transfer a permit, under certain circumstances.
- Allow a permittee to expand the area of impact beyond that originally authorized in the permit or certificate, if certain conditions are met and subject to specified limitations.
- Require the DEQ to post and maintain an internet registry of waterbodies infested with aquatic invasive species.

Additionally, the bill exempts from the permit requirement of Part 301 (Inland Lakes and Streams) hand-pulling of aquatic nuisance plant species and raking unvegetated bottomlands without using a powered or mechanized tool.

The bill took effect on June 24, 2014.

Part 33

Application Fee & Submission. Subject to certain exceptions, Part 33 requires a person to obtain from the DEQ an individual permit or certificate of coverage to chemically treat either of the following:

- Any waters of the State, if water is visibly present or contained in the area of impact at the time of chemical treatment.
- The Great Lakes or Lake St. Clair if the area of impact is exposed bottomland located below the ordinary high-water mark.

(A certificate of coverage is written authorization from the DEQ to implement a project under a general permit, which the Department issues for a category of activities that will not have a negative impact on human health and will have no more than minimal short-term adverse impacts on natural resources and the environment.)

Part 33 prohibits the use of a chemical in waters of the State for aquatic nuisance control unless it is registered with the U.S. Environmental Protection Agency and the Michigan Department of Agriculture and Rural Development for the activity for which it is used. The bill prohibits the DEQ from denying a permit or certificate of coverage because of the specific chemical proposed to be used, if the chemical is so registered, unless the DEQ has worked with the applicant to identify an appropriate alternative chemical that satisfies the Department's concern and no such chemical is available.

Part 33 establishes an application fee of \$75 for a certificate of coverage and the following application fees for an individual permit, based on the size of the area of impact:

- Less than one-half acre, \$75.
- One-half acre or more but less than five acres, \$200.
- Five acres or more but less than 20 acres, \$400.
- Twenty acres or more but less than 100 acres, \$800.
- 100 acres or more, \$1,500.

Previously, these fees were set to expire on October 1, 2015. The bill moved the sunset on the fee for a certificate of coverage up to October 1, 2014, and eliminated the sunset on the individual permit fees. The bill also deleted a requirement that the DEQ forward the application fees to the State Treasurer for deposit in the Land and Water Management Permit Fee Fund.

Under the bill, for the State fiscal year 2014-15 and each subsequent fiscal year, the DEQ must proportionately adjust the permit application fees by category to achieve a target in fee revenue and post the adjusted fees on its website by November 1. The Department must set the target so that the annual cumulative total of the target amount, plus of all of the following, equals \$900,000, as nearly as possible:

- The total amount of required annual fees paid for a multiyear permit under the bill (as described below).
- The amount of general funds appropriated to the program under Part 33.
- The amount in the Aquatic Nuisance Control Fund in excess of \$100,000 carried forward from the previous fiscal year.

The adjusted fees must be proportional to and may not exceed the initial amounts prescribed in Part 33. For each fiscal year beginning with FY 2015-16, the State Treasurer must adjust the \$900,000 figure by an amount he or she determines at the end of the preceding fiscal year to reflect the cumulative annual percentage change in the consumer price index.

The bill provides that the application fee, a required annual fee, or a fee associated with expanding an approved treatment area (as described below) may be paid by credit or debit card or electronic fund transfer. The DEQ must determine which major credit and debit cards may be used to pay a

fee, and may collect a service assessment from the card user. The service assessment may not exceed the Department's actual cost of the transaction.

The bill prohibits the DEQ from charging a fee for an amendment to an application for a certificate of coverage or permit, including an amendment after an application has been resubmitted.

Aquatic Nuisance Control Fund. The bill created the Fund in the State Treasury. The DEQ must forward all application fees, required annual fees, and fees associated with expanding an approved treatment area to the State Treasurer for deposit into the Fund. The State Treasurer may receive money or other assets from any other source for deposit into the Fund, and must credit to it interest and earnings from Fund investments. Money in the Fund at the close of the fiscal year will remain in the Fund and not lapse to the General Fund. The DEQ is the Fund administrator for auditing purposes. The DEQ must spend Fund money, upon appropriation, only for the administration of Part 33, including the following:

- Issuance of certificates of coverage and permits.
- Technology and reasonable laboratory costs to operate the program under Part 33.
- Compliance and enforcement activities related to aquatic nuisance control.
- Education of aquatic herbicide applicators, local and State government agencies, lake boards, lakefront property owners, and the general public about aquatic nuisance control and the requirements of Part 33.

The DEQ Director may contract with a nonprofit educational organization to administer an educational program.

Application Processing. Previously, the DEQ had to approve or deny an application for a certificate of coverage by May 1 or within 15 working days after receiving a complete application, whichever was later. Under the bill, the Department must approve or deny the application by the latest of the following dates:

- April 15.
- 15 working days after receiving a complete application.
- Any date requested by the applicant and agreed to by the Department.

Previously, the DEQ had to approve an application for a permit in whole or part and issue the permit, or deny the application, by May 1 or within 30 working days after receiving a complete application, whichever was later. Under the bill, instead, the Department must approve or deny the permit by the latest of the following dates:

- April 15.
- 30 working days after receiving a complete application, or 15 days after, if the waterbody is listed on the DEQ registry as being infested with the particular aquatic invasive species (AIS) that the applicant proposes to control.
- Any date requested by the applicant and agreed to by the Department.

The bill prohibits the DEQ from delaying processing an application for either a permit or a certificate of coverage because the Department has not completed processing of the application fee payment, or because the application was submitted after a certain date in the year in which treatment is proposed. If the Department approves an application in part or denies it, the applicant may resubmit it with changes to address the reasons for the partial approval or denial. A resubmitted application is not subject to an additional fee.

Part 33 requires the Department to pay the applicant an amount equal to 15% of the application fee if the DEQ fails to satisfy the requirements of Part 33 with respect to an application. The bill also requires that the application be considered approved and the DEQ be considered to have made any determination required for approval if all of the following apply:

- The proposed area of impact is the same as or entirely contained within the area of impact approved in a previous permit.

- The active ingredient or trade name of each chemical proposed to be applied is the same as approved in a previous permit and each chemical is currently approved for use by the Department.
- The application rate and number of treatments do not exceed those approved in the previous permit.
- The minimum length of time between treatments is not less than that approved in the previous permit.

Under the bill, the term of a certificate or permit must be at least three years, unless the applicant requests a shorter term.

The bill also provides that an application for a certificate of coverage may be submitted electronically.

Permits & Annual Fees. At a minimum, a permit under Part 33 must include the active ingredient or the trade name of each chemical to be applied, the application rate of each, the maximum amount of each to be applied per treatment, the minimum length of time between treatments, and maps that clearly delineate the approved area of impact. Under the bill, a permit also must include its term, which may not be less than three years.

The bill requires a permit to authorize chemical treatment in each year covered by the permit. This requirement does not apply to a chemical if its annual use is restricted in rules that were in effect on the bill's effective date.

The bill requires the permittee, by April 1 of the second and each subsequent year of a permit, to pay the DEQ an annual fee equal to the established permit application fee, including an additional fee for an expansion of the area of impact (as described below). If the DEQ does not receive an annual fee by April 1, the permit will be suspended until the fee is paid.

The bill allows an applicant, when paying the application fee for a permit, also to pay in advance all of the annual fees that will become due if the permit is granted for the requested term. If the application is denied or granted for a shorter period than requested, the DEQ must refund the overpayment of annual fees.

Permit Revision & Transfer. Under the bill, the DEQ may make revisions to a permit under Part 33 to minimize the impacts on the natural resources, public health, and safety, or to improve aquatic nuisance control. Previously, the Department was authorized to make "minor" revisions. The bill also prohibits the DEQ from charging a fee for a request for revisions to a permit. The Department must approve a request for revisions in whole or in part or deny the request within three business days after receiving it.

Under Part 33, only the following may apply for a permit or certificate:

- An owner of bottomland within the proposed area of impact.
- A lake board established for the affected waterbody.
- A State or local governmental entity.
- A person who has written authorization to act on behalf of any of these people or entities.

Under the bill, if the permittee has written authorization to act on behalf of another person, upon that person's written request, the DEQ must transfer the permit to a new permittee with written authorization to act on behalf of that person. The DEQ must notify the original permittee of the transfer.

Expanded Area of Impact. The bill allows a permittee to expand the area of impact beyond that authorized in a permit or certificate of coverage, without a revision to the permit or certificate, to include adjacent areas of the same waterbody that become infested after the application was submitted to the DEQ. The permittee may increase the amount of chemicals used, as authorized in the permit or certificate, by an amount proportionate to the expansion. Before the initial

treatment of the expanded area of treatment, the permittee must notify the DEQ. Within 15 business days after the initial treatment, the permittee must give the DEQ all of the following:

- A written explanation of the necessity for the expansion.
- A map that clearly delineates the changes to the area of impact.
- A written statement specifying the increase in the amount of chemicals used or to be used as a result of the expansion.
- The treatment dates for the expanded area.
- If the permit application fee would have been higher if the expanded area had been included in the application, a fee equal to the difference between the fee paid and the fee that would have been due.

If the area of impact authorized in a permit or certificate of coverage is greater than 100 acres, the bill prohibits a permittee from expanding the area of impact by more than 50% unless both of the following apply:

- The permittee has notified the DEQ in advance of the proposal to expand the area of impact.
- The DEQ has not, within two business days after receiving the notification, notified the permittee of specific concerns about the proposal and that the proposal requires a revision of the permit or certificate.

Registry of Infested Waterbodies. The bill requires the DEQ to post by January 1, 2016, and maintain on its website a registry of waterbodies infested by AIS and the particular AIS infesting each one. The registry must be based on information from permits and certificates of coverage issued under Part 33 and reports received by the DEQ from any of the following:

- Certified applicators or registered applicators under Part 83 (Pesticide Control).
- Representatives of public or private institutions of higher education.
- Representatives of any other State, local, or Federal agency with responsibility for the environment or natural resources.

Part 301

Under Part 301 (Inland Lakes and Streams), a person must have a permit from the DEQ in order to engage in certain activities, such as dredging or filling bottomland; creating, enlarging, or diminishing an inland lake or stream; or structurally interfering with the natural flow of an inland lake or stream.

A permit is not required for a number of activities, including reasonable sanding of beaches to the existing water's edge by the riparian owner. The bill refers to the riparian owner or a person authorized by the riparian owner.

Also, under the bill, a permit is not required for the removal, by the riparian owner or a person authorized by the owner, of plants that are an aquatic nuisance as defined in Part 33, if the removal is accomplished by hand-pulling without using a powered or mechanized tool and all plant fragments are removed from the water and properly disposed of on land above the ordinary high-water mark.

In addition, the bill allows the riparian owner or another authorized person to rake bottomlands without a permit. To minimize effects on the lake bottomlands, the raked areas must be unvegetated before raking and predominantly composed of sand or pebbles, and the raking must be performed without using a powered or mechanized tool. The bill provides that the pulling of a nonpowered, nonmechanized tool with a boat is not considered the use of a powered or mechanized tool.

FISCAL IMPACT

The bill will have a neutral fiscal impact on State government and no fiscal impact on local units of government. The bill changed the sunset date for the \$75 certificate of coverage fee from October 1, 2015, to October 1, 2014. This fee directly supported the processing of certificates of coverage. The bill removed the October 1, 2015, sunset on the permit fees, which range between \$75 and \$1,500, depending on the number of acres to be treated.

After October 1, 2014, the fees will be adjusted annually so that the amount collected in each fiscal year is \$900,000, which will be adjusted for inflation annually. This amount will be sufficient to run the Aquatic Nuisance Control program at its existing level.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.