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Senate Bill 444 (as introduced 6-20-13)  
Sponsor: Senator Tom Casperson  
Committee: Natural Resources, Environment and Great Lakes

Date Completed: 9-9-13

### **CONTENT**

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

- Delay a sunset on the application fee requirement for a permit or certificate of coverage to chemically treat a body of water, from October 1, 2015, until October 1, 2018.
- Revise the time frame for the Department of Environmental Quality (DEQ) to process an application for a permit or certificate of coverage.
- Require an application to be considered approved under certain circumstances, if the DEQ failed to comply with the prescribed time frame.
- Limit the term of a permit to three years.
- 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 were not paid on time.
- Prohibit the DEQ from charging a fee for a request for permit revisions or for an amendment to an application.
- Require the DEQ to approve or deny a request for revisions within two 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 were met.
- Require the DEQ to post and maintain an internet registry of waterbodies infested with aquatic nuisance species.
- Authorize a local unit of government to adopt an ordinance for the prevention, control, or eradication of aquatic nuisances in a waterbody within its boundaries.
- Prescribe criteria to be met in order for an aquatic nuisance ordinance to be enforceable.

#### 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 the natural resources and environment.)

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.

The DEQ must forward the application fees to the State Treasurer for deposit in the Land and Water Management Permit Fee Fund (from which the DEQ may spend money, upon appropriation, to implement various provisions of NREPA and the Land Division Act). These fees are set to expire on October 1, 2015. The bill would delay the sunset until October 1, 2018.

The bill provides that the application fee or a required annual fee (described below) could be paid by credit or debit card or electronic fund transfer. The DEQ would have to determine which major credit and debit cards could be used to pay a fee, and could collect a service assessment from the card user. The service assessment could not exceed the Department's actual cost of the transaction or the amount appropriated to cover service assessments, whichever was less.

The bill would prohibit 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 had been resubmitted.

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

#### Application Processing

Currently, the DEQ must approve or deny an application for a certificate of coverage by May 1 or within 15 working days after receiving a complete application, whichever is later. The bill would refer to April 1 rather than May 1.

The DEQ must 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 is later. The bill would refer to April 1 rather than May 1. The bill also would create an exception to this deadline if the waterbody were listed on the proposed registry as being infested with the particular aquatic nuisance species that the applicant proposed to control under the permit. In that case, within 15 working days after receiving a complete application, the Department would have to approve it and issue the permit, or deny it.

The bill would prohibit the DEQ from delaying processing an application for either a permit or a certificate of coverage because the Department had not completed processing of the application fee payment, or because the application was submitted after a certain date in the year in which treatment was proposed. If the Department approved an application in

part or denied it, the applicant could resubmit it with amendments to address the reasons for the partial approval or denial. The resubmitted application would not be subject to an additional fee.

Currently, if the DEQ fails to satisfy the requirements of Part 33 with respect to an application, the Department must pay the applicant an amount equal to 15% of the application fee. Under these circumstances, the bill also would require that the application be considered approved and the DEQ be considered to have made any determination required for approval if all of the following applied:

- The proposed area of impact was 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 was the same as approved in a previous permit and each chemical was currently approved for use by the Department.
- The application rate and number of treatments would not exceed those approved in the previous permit.
- The minimum length of time between treatments was not less than that approved in the previous permit.

#### Registry of Infested Waterbodies

The bill would require the DEQ to post and maintain on its website a registry of waterbodies infested by aquatic nuisance species (ANS) and the particular ANS infesting each one. The registry would have to 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.

#### 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 would have to include its term, which could not exceed three years.

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

By April 1 of the second and each subsequent year of the permit, the permittee would have 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). The last annual fee, however, would be subject to a discount equal to 5% multiplied by the number of years in the permit term in excess of one year. If the DEQ did not receive an annual fee by April 1, the permit would be suspended until the fee was paid.

When an applicant paid the application fee for a permit, he or she could choose to also pay in advance all of the annual fees that would become due if the permit were granted for the requested term. If the application were denied or granted for a shorter period than requested, the DEQ would have to refund those annual fees that would not become due.

## Permit Revision & Transfer

Part 33 authorizes the DEQ to make minor revisions to a permit to minimize the impacts on the natural resources, public health, and safety, or to improve aquatic nuisance control. The bill would eliminate the reference to "minor" revisions. The bill also would prohibit the DEQ from charging a fee for a request for revisions to a permit. The Department would have to approve a request for revisions in whole or in part or deny the request within two business days after receiving it.

Currently, 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 had written authorization to act on another's behalf, upon that person's written request, the DEQ would have to transfer the permit to a new permittee with written authorization to act on behalf of that person. The DEQ would have to notify the original permittee of the transfer.

## Expanded Area of Impact

The bill would allow a permittee to expand the area of impact beyond that authorized in the permit or certificate of coverage, without a revision to the permit or certificate, to include adjacent waters that became infested after the application was submitted to the DEQ. The permittee could increase the amount of chemicals, as authorized in the permit or certificate, according to the approved product label to match the expansion. Within 15 business days after the initial treatment of the expanded area of impact, the permittee would have to give the DEQ all of the following:

- A written explanation of the necessity for the expansion.
- A map that clearly delineated 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.
- 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.

## Local Ordinance

The bill would authorize a local unit of government to adopt an ordinance for the prevention, control, or eradication of aquatic nuisances in a waterbody, other than a Great Lake or connecting water, that lay in whole or in part within the local unit's boundaries. The ordinance could not conflict with State law.

The ordinance could require the payment of a fee for launching or using a vessel in the waterbody if the fee were used exclusively for the purposes of preventing, controlling, or eradicating aquatic nuisances and the costs of administering and enforcing the ordinance. The fee could not be charged, however, unless the DEQ had determined in writing, such as by issuance of a permit, that the waterbody was infested with an aquatic nuisance, nor could the fee be charged after the nuisances had been eradicated. The ordinance could exempt from the fee a pesticide applicator, lake management consultant, or other person engaged in aquatic nuisance management activities; a government entity; or a nonprofit

organization. A maximum of 5% of the revenue collected from the fee could be used for administration.

A local ordinance would not be enforceable unless either of the following applied:

- The same ordinance was adopted by at least 50% of the cities and townships within which the waterbody was located and at least two-thirds of the waterbody's shoreline was located within those cities and townships.
- The same ordinance was adopted by at least 50% of the counties within which the waterbody was located and at least two-thirds of the shoreline was located within those counties.

MCL 324.3306 et al.

Legislative Analyst: Julie Cassidy

### **FISCAL IMPACT**

The bill would have a neutral fiscal impact on State government and no fiscal impact on local units of government. Changing the sunset date for aquatic nuisance permit and certificate of coverage fees from October 1, 2015, to October 1, 2018, would have no immediate fiscal impact on the Department of Environmental Quality, but would allow the DEQ to collect the fees for an additional three years. These fees directly support the processing of permits and certificates of coverage and range between \$75 and \$1,500, depending on the number of acres to be treated.

Fiscal Analyst: Josh Sefton

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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.