

**HOUSE SUBSTITUTE FOR
SENATE BILL NO. 1211**

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 1307, 1511, 30101, 30112, 30301, 30304, 30305,
30306, 30307, 30314, 30316, 30319, 30321, and 32301 (MCL 324.1307,
324.1511, 324.30101, 324.30112, 324.30301, 324.30304, 324.30305,
324.30306, 324.30307, 324.30314, 324.30316, 324.30319, 324.30321,
and 324.32301), section 1307 as amended by 2018 PA 268, section
1511 as added by 2011 PA 237, section 30101 as amended by 2014 PA
351, sections 30112, 30314, 30316, 30319, and 32301 as added by
1995 PA 59, section 30301 as amended by 2012 PA 247, section 30304
as amended by 2004 PA 325, sections 30305, 30306, and 30321 as
amended by 2013 PA 98, and section 30307 as amended by 2006 PA 430.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1307. (1) By the processing deadline, the department

1 shall approve or deny an application for a permit.

2 (2) If requested by the permit applicant, the department shall
3 extend the processing period for a permit by not more than 120
4 days, as specified by the applicant. If requested by the permit
5 applicant, the department may extend the processing period beyond
6 the additional 120 days. However, a processing period shall not be
7 extended under this subsection to a date later than 1 year after
8 the application period ends.

9 (3) A processing period is tolled from the date that a permit
10 applicant submits a petition under section 1315(1) until the date
11 that a decision of the director is made under section 1315(6). If a
12 permit applicant submits a petition under section 1315(1), the
13 department shall not approve or deny the application for the permit
14 under subsection (1) until after the director issues a decision
15 under section 1315(6).

16 (4) The approval or denial of an application for a permit
17 shall be in writing and shall be based upon evidence that would
18 meet the standards in section 75 of the administrative procedures
19 act of 1969, 1969 PA 306, MCL 24.275.

20 (5) Approval of an application for a permit may be granted
21 with conditions or modifications necessary to achieve compliance
22 with the part or parts of this act under which the permit is
23 issued.

24 (6) A denial of an application for a permit **OR, FOR A PERMIT**
25 **UNDER PART 301 OR 303, AN APPROVAL WITH MODIFICATION OF AN**
26 **APPLICATION FOR A PERMIT** shall document, and any review upholding
27 the ~~decision~~**DENIAL OR MODIFICATION** shall determine, to the extent

1 practical, all of the following:

2 (a) That the decision is based on ~~specific~~**SPECIFICALLY CITED**
3 provisions of this act or rules promulgated under this act.

4 (b) That the decision is based upon sufficient facts or data,
5 which are recorded in the file.

6 (c) To the extent applicable, all of the following:

7 (i) That the decision is the product of reliable scientific
8 principles and methods.

9 (ii) That the decision has applied the principles and methods
10 reliably to the facts.

11 **(D) IN THE CASE OF DENIAL OF AN APPLICATION FOR A PERMIT UNDER**
12 **PART 301 OR 303, SUGGESTIONS ON CHANGES TO ALLOW THE PERMIT TO BE**
13 **APPROVED.**

14 (7) Except for permits described in subsection (8), if the
15 department fails to satisfy the requirements of subsection (1) with
16 respect to an application for a permit, the department shall pay
17 the applicant an amount equal to 15% of the greater of the
18 following, as applicable:

19 (a) The amount of the application fee for that permit.

20 (b) If an assessment or other fee is charged on an annual or
21 other periodic basis by the department to a person holding the
22 permit for which the application was submitted, the amount of the
23 first periodic charge of that assessment or other fee for that
24 permit.

25 (8) If the department fails to satisfy the requirements of
26 subsection (1) with respect to a permit required by section 11509,
27 11512, 30304, or 32603, the application shall be considered to be

1 approved and the department shall be considered to have made any
2 determination required for approval.

3 (9) The failure of the department to satisfy the requirements
4 of subsection (1) or the fact that the department is required to
5 make a payment under subsection (7) or is considered to have
6 approved a permit under subsection (8) shall not be used by the
7 department as the basis for discriminating against the applicant.
8 If the department is required to make a payment under subsection
9 (7), the application shall be processed in sequence with other
10 applications for the same type of permit, based on the date on
11 which the processing period began, unless the director determines
12 on an application-by-application basis that the public interest is
13 best served by processing in a different order.

14 (10) If the department fails to satisfy the requirements of
15 subsection (1) with respect to 10% or more of the applications for
16 a particular type of permit received during a quarter of the state
17 fiscal year, the department shall immediately devote resources from
18 that program to eliminate any backlog and satisfy the requirements
19 of subsection (1) with respect to new applications for that type of
20 permit within the next fiscal quarter.

21 (11) If the department fails to satisfy the requirements of
22 subsection (1), the director shall notify the appropriations
23 committees of the senate and house of representatives of the
24 failure. The notification shall be in writing and shall include
25 both of the following:

26 (a) An explanation of the reason for the failure.

27 (b) A statement of the amount the department was required to

1 pay the applicant under subsection (7) or a statement that the
2 department was required to consider the application to be approved
3 under subsection (8), as applicable.

4 Sec. 1511. (1) Subject to subsection (2) and notwithstanding
5 any other provision of this act, before initiating a civil
6 enforcement action under this act against a person, ~~holding a~~
7 ~~permit,~~ the department shall ~~contact~~ **DO BOTH OF THE FOLLOWING:**

8 **(A) BEGINNING MAY 1, 2019, PROVIDE THE PERSON IN WRITING A**
9 **LIST OF EACH SPECIFIC PROVISION OF STATUTE, RULE, OR PERMIT THAT**
10 **THE PERSON IS ALLEGED TO HAVE VIOLATED AND A STATEMENT OF THE FACTS**
11 **CONSTITUTING THE VIOLATION.**

12 **(B) CONTACT** the ~~permittee~~ **PERSON** and extend an offer for staff
13 of the department to meet with the person to discuss the potential
14 civil enforcement action and potential resolution of the issue. If
15 the ~~permittee~~ **PERSON** agrees to meet with the department, the
16 department shall not initiate a civil enforcement action until
17 after the meeting is held, unless the meeting is not held within a
18 reasonable time ~~as determined by the department.~~ **OF NOT LESS THAN 60**
19 **DAYS.**

20 (2) Subsection (1) does not apply under any of the following
21 circumstances:

22 (a) The civil enforcement action is a civil infraction action.

23 (b) The department determines that the violation that is the
24 subject of the potential civil enforcement action constitutes an
25 imminent and substantial endangerment of the public health, safety,
26 or welfare or of the environment.

27 (3) As used in this section:

1 (a) "Department" means the department, agency, or officer
2 authorized by this act to approve or deny an application for a
3 permit.

4 (b) "Permit" means a permit or operating license issued under
5 this act.

6 Sec. 30101. As used in this part:

7 (a) "Bottomland" means the land area of an inland lake or
8 stream that lies below the ordinary high-water mark and that may or
9 may not be covered by water.

10 (b) "Bulkhead line" means a line that is established pursuant
11 to this part beyond which dredging, filling, or construction of any
12 kind is not allowed without a permit.

13 (c) "Dam" means an artificial barrier, including dikes,
14 embankments, and appurtenant works, that impounds, diverts, or is
15 designed to impound or divert water.

16 (d) "Department" means the department of environmental
17 quality.

18 (e) "Expand" means to occupy a larger area of an inland lake
19 or stream than authorized by a permit issued under this part for
20 marina mooring structures and watercraft moored at the marina.

21 (f) "Fund" means the land and water management permit fee fund
22 created in section 30113.

23 (g) "Height of the dam" means the difference in elevation
24 measured vertically between the natural bed of an inland lake or
25 stream at the downstream toe of the dam, or, if it is not across a
26 stream channel or watercourse, from the lowest elevation of the
27 downstream toe of the dam, to the design flood elevation or to the

1 lowest point of the top of the dam, whichever is less.

2 (h) "Impoundment" means water held back by a dam, dike,
3 floodgate, or other barrier.

4 ~~—— (i) "Inland lake or stream" means a natural or artificial~~
5 ~~lake, pond, or impoundment; a river, stream, or creek which may or~~
6 ~~may not be serving as a drain as defined by the drain code of 1956,~~
7 ~~1956 PA 40, MCL 280.1 to 280.630; or any other body of water that~~
8 ~~has definite banks, a bed, and visible evidence of a continued flow~~
9 ~~or continued occurrence of water, including the St. Marys, St.~~
10 ~~Clair, and Detroit rivers. Inland lake or stream does not include~~
11 ~~the Great Lakes, Lake St. Clair, or a lake or pond that has a~~
12 ~~surface area of less than 5 acres.~~

13 (I) "INLAND LAKE", MEANS EITHER OF THE FOLLOWING:

14 (i) AN ARTIFICIAL OR NATURAL INLAND LAKE, POND, OR IMPOUNDMENT
15 THAT IS A WATER OF THE UNITED STATES AS THAT TERM IS USED IN
16 SECTION 502(7) OF THE FEDERAL WATER POLLUTION CONTROL ACT, 33 USC
17 1362.

18 (ii) A PERMANENT ARTIFICIAL OR NATURAL INLAND LAKE, POND, OR
19 IMPOUNDMENT THAT HAS DEFINITE BANKS, A BED, AND VISIBLE EVIDENCE OF
20 A CONTINUED OCCURRENCE OF WATER AND THAT IS MORE THAN 5 ACRES IN
21 SIZE. INLAND LAKE UNDER THIS SUBPARAGRAPH DOES NOT INCLUDE ANY OF
22 THE FOLLOWING:

23 (A) THE GREAT LAKES OR LAKE ST. CLAIR.

24 (B) A FEATURE USED FOR TREATING WASTEWATER OR STORM WATER.

25 (C) ARTIFICIAL FEATURES CREATED IN LAND UNREGULATED BY THIS
26 PART AND USED FOR COOLING OR STORING WATER, FARM OR LIVESTOCK
27 IRRIGATION OR WATERING, LOG CLEANING, SWIMMING, MINING OR

1 CONSTRUCTION ACTIVITIES, OR RAISING FISH AND OTHER AQUATIC SPECIES.

2 (D) AN ARTIFICIALLY IRRIGATED OR FLOODED AREA THAT WILL REVERT
3 TO DRY LAND IF THE APPLICATION OF WATER TO THAT AREA CEASES.

4 (j) "Marina" means a facility that is owned or operated by a
5 person, extends into or over an inland lake or stream, and offers
6 service to the public or members of the marina for docking,
7 loading, or other servicing of recreational watercraft.

8 (k) "Minor offense" means either of the following violations
9 of this part if the project involved in the offense is a minor
10 project or the department determines that restoration of the
11 affected property is not required:

12 (i) The failure to obtain a permit under this part.

13 (ii) A violation of a permit issued under this part.

14 (l) "Mooring structures" means structures used to moor
15 watercraft, including, but not limited to, docks, piers, pilings,
16 mooring anchors, lines and buoys, and boat hoists.

17 (m) "Ordinary high-water mark" means the line between upland
18 and bottomland that persists through successive changes in water
19 levels, below which the presence and action of the water is so
20 common or recurrent that the character of the land is marked
21 distinctly from the upland and is apparent in the soil itself, the
22 configuration of the surface of the soil, and the vegetation. On an
23 inland lake that has a level established by law, it means the high
24 established level. Where water returns to its natural level as the
25 result of the permanent removal or abandonment of a dam, it means
26 the natural ordinary high-water mark.

27 (n) "Project" means an activity that requires a permit

1 pursuant to section 30102.

2 (o) "Property owners' association" means any group of
3 organized property owners publishing a directory of their
4 membership, the majority of which are riparian owners and are
5 located on the inland lake or stream that is affected by the
6 proposed project.

7 (p) "Reconfigure" means to, without expanding the marina, do
8 either of the following:

9 (i) Change the location of the dock or docks and other mooring
10 structures at the marina to occupy an area of the inland lake or
11 stream that was not previously authorized by a permit issued under
12 this part.

13 (ii) Decrease the distance available for ingress and egress to
14 an outside slip as described in section 30106a.

15 (q) "Riparian interest area" means that portion of an inland
16 lake or stream over which a riparian owner has an ownership
17 interest.

18 (r) "Riparian owner" means a person who has riparian rights.

19 (s) "Riparian rights" means those rights which are associated
20 with the ownership of the bank or shore of an inland lake or
21 stream.

22 (t) "Seasonal structure" includes any type of dock, boat
23 hoist, ramp, raft, or other recreational structure that is placed
24 into an inland lake or stream and removed at the end of the boating
25 season.

26 (u) "Seawall" means a vertically sloped wall constructed to
27 break the force of waves and retain soil for the purpose of shore

1 protection.

2 (V) "STREAM" MEANS EITHER OF THE FOLLOWING:

3 (i) AN ARTIFICIAL OR NATURAL RIVER, STREAM, OR CREEK THAT IS A
4 WATER OF THE UNITED STATES AS THAT TERM IS USED IN SECTION 502(7)
5 OF THE FEDERAL WATER POLLUTION CONTROL ACT, 33 USC 1362.

6 (ii) A PERMANENT ARTIFICIAL OR NATURAL RIVER, STREAM, OR CREEK
7 THAT HAS DEFINITE BANKS, A BED, AND A CONTINUED FLOW OF WATER.
8 STREAM UNDER THIS SUBPARAGRAPH DOES NOT INCLUDE ANY OF THE
9 FOLLOWING:

10 (A) A DITCH WITH EPHEMERAL FLOW THAT DOES NOT FLOW DIRECTLY
11 FROM OR THROUGH A FEATURE REGULATED UNDER THIS PART.

12 (B) AN ARTIFICIALLY IRRIGATED OR FLOODED AREA THAT WILL REVERT
13 TO DRY LAND IF THE APPLICATION OF WATER TO THAT AREA CEASES.

14 (C) AN EROSIONAL FEATURE INCLUDING GULLIES, RILLS, AND OTHER
15 EPHEMERAL FEATURES.

16 (D) A STORM WATER OR WASTEWATER CONTROL FEATURE CONSTRUCTED TO
17 CONVEY, TREAT, OR STORE STORM WATER OR WASTEWATER THAT IS CREATED
18 ON LAND UNREGULATED BY THIS PART.

19 (W) ~~(v)~~"Structure" includes a wharf, dock, pier, seawall,
20 dam, weir, stream deflector, breakwater, groin, jetty, sewer,
21 pipeline, cable, and bridge.

22 (X) ~~(w)~~"Upland" means the land area that lies above the
23 ordinary high-water mark.

24 Sec. 30112. (1) The department may commence a civil action in
25 the circuit court of the county in which a violation occurs to
26 enforce compliance with this part, to restrain violation of this
27 part or any action contrary to an order of the department denying a

1 permit, to enjoin the further performance of, or order the removal
2 of, any project that is undertaken contrary to this part or after
3 denial of a permit by the department, or to order the restoration
4 of the affected area to its prior condition.

5 (2) In a civil action commenced under this part, the circuit
6 court, in addition to any other relief granted, may assess a civil
7 fine of not more than \$5,000.00 per day for each day of violation.

8 (3) Except as provided in subsection (4), a person who
9 violates this part or a permit issued under this part is guilty of
10 a misdemeanor, punishable by a fine of not more than \$10,000.00 per
11 day for each day of violation.

12 (4) A person who commits a minor offense is guilty of a
13 misdemeanor, punishable by a fine of not more than \$500.00 for each
14 violation. A law enforcement officer may issue and serve an
15 appearance ticket upon a person for a minor offense pursuant to
16 sections ~~9a-9C~~ to 9g of chapter IV of the code of criminal
17 procedure, ~~Act No. 175 of the Public Acts of 1927, being sections~~
18 ~~764.9a to 764.9g of the Michigan Compiled Laws.1927 PA 175, MCL~~
19 **764.9C TO 764.9G.**

20 (5) A person who knowingly makes a false statement,
21 representation, or certification in an application for a permit or
22 in a notice or report required by a permit, or a person who
23 knowingly renders inaccurate any monitoring device or method
24 required to be maintained by a permit, is guilty of a misdemeanor,
25 punishable by a fine of not more than \$10,000.00 per day for each
26 day of violation.

27 (6) Any civil ~~penalty~~ **SANCTION** assessed, sought, or agreed to

1 by the department shall be appropriate to the violation.

2 Sec. 30301. (1) As used in this part:

3 (A) "CONTIGUOUS TO" DESCRIBES A LAND OR WATER FEATURE HAVING A
4 CONTINUOUS SURFACE WATER CONNECTION OR A SIMILAR, NATURAL, DIRECT
5 PHYSICAL CONNECTION WITH THE GREAT LAKES, LAKE ST. CLAIR, OR AN
6 INLAND LAKE OR STREAM. A WETLAND IS PER SE CONTIGUOUS TO AN INLAND
7 LAKE OR STREAM IF IT IS LOCATED WITHIN 500 FEET OF THE ORDINARY
8 HIGH-WATER MARK OF AN INLAND LAKE OR STREAM, UNLESS THERE IS NO
9 SURFACE WATER OR GROUNDWATER CONNECTION. A LAND OR WATER FEATURE IS
10 PER SE CONTIGUOUS TO THE GREAT LAKES OR LAKE ST. CLAIR IF IT IS
11 LOCATED WITHIN 1,000 FEET OF THE ORDINARY HIGH-WATER MARK OF A
12 GREAT LAKE OR LAKE ST. CLAIR, UNLESS THERE IS NO SURFACE OR
13 GROUNDWATER CONNECTION. THIS SUBDIVISION DOES NOT APPLY TO A LAND
14 OR WATER FEATURE THAT IS A WATER OF THE UNITED STATES AS THAT TERM
15 IS USED IN SECTION 502(7) OF THE FEDERAL WATER POLLUTION CONTROL
16 ACT, 33 USC 1362.

17 (B) ~~(a)~~-"Department" means the department of environmental
18 quality.

19 (C) ~~(b)~~-"Director" means the director of the department.

20 (D) ~~(c)~~-"Exceptional wetland" means wetland that provides
21 physical or biological functions essential to the natural resources
22 of ~~the~~ THIS state and that may be lost or degraded if not preserved
23 through an approved site protection and management plan for the
24 purposes of providing compensatory wetland mitigation.

25 (E) ~~(d)~~-"Fill material" means soil, rocks, sand, waste of any
26 kind, or any other material that displaces soil or water or reduces
27 water retention potential.

1 (F) "HYDRIC SOIL" MEANS A SOIL THAT FORMED UNDER CONDITIONS OF
2 SATURATION, FLOODING, OR PONDING LONG ENOUGH DURING THE GROWING
3 SEASON TO DEVELOP ANAEROBIC CONDITIONS IN THE UPPER PART.

4 (G) ~~(e)~~—"Landscape level wetland assessment" means the use of
5 aerial photographs, maps, and other remotely sensed information to
6 predict and evaluate wetland characteristics and functions in the
7 context of all of the following:

8 (i) The wetland's landscape position and hydrologic
9 characteristics.

10 (ii) The surrounding landscape.

11 (iii) The historic extent and condition of the wetland.

12 (H) ~~(f)~~—"Minor drainage" includes ditching and tiling for the
13 removal of excess soil moisture incidental to the planting,
14 cultivating, protecting, or harvesting of crops or improving the
15 productivity of land in established use for agriculture,
16 horticulture, silviculture, or lumbering.

17 (I) ~~(g)~~—"Nationwide permit" means a nationwide permit issued
18 by the United States ~~army corps of engineers~~ **ARMY CORPS OF**
19 **ENGINEERS** under 72 FR 11091 to 11198 (March 12, 2007), including
20 all general conditions, regional conditions, and conditions imposed
21 by this state pursuant to a water quality certification under
22 section 401 of title IV of the federal water pollution control act,
23 33 USC 1341, or a coastal zone management consistency determination
24 under section 307 of the coastal zone management act of 1972, 16
25 USC 1456.

26 (J) ~~(h)~~—"Ordinary high-water mark" means the ordinary high-
27 water mark as specified in section 32502.

1 **(K)** ~~(i)~~—"Person" means an individual, sole proprietorship,
 2 partnership, corporation, association, municipality, this state, an
 3 instrumentality or agency of this state, the federal government, an
 4 instrumentality or agency of the federal government, or other legal
 5 entity.

6 **(L)** ~~(j)~~—"Rapid wetland assessment" means a method for
 7 generally assessing the functions, values, and condition of
 8 individual wetlands based on existing data and field indicators.

9 **(M)** ~~(k)~~—"Rare and imperiled wetland" means any of the
 10 following:

11 (i) Great Lakes marsh.

12 (ii) Southern wet meadow.

13 (iii) Inland salt marsh.

14 ~~(iv) Intermittent wetland or boggy seepage wetland.~~

15 **(iv)** ~~(v)~~—Coastal plain marsh.

16 **(v)** ~~(vi)~~—Interdunal wetland.

17 **(vi)** ~~(vii)~~—Lakeplain wet prairie.

18 **(vii)** ~~(viii)~~—Lakeplain wet-mesic prairie.

19 **(viii)** ~~(ix) Northern wet-mesic prairie.~~ **COASTAL FEN.**

20 **(ix)** ~~(x)~~—Wet-mesic prairie.

21 **(x)** ~~(xi)~~—Wet prairie.

22 **(xi)** ~~(xii)~~—Prairie fen.

23 **(xii)** ~~(xiii)~~—Northern fen.

24 **(xiii)** ~~(xiv)~~—Patterned fen.

25 **(xiv)** ~~(xv)~~—Poor fen.

26 **(xv)** ~~(xvi)~~—Muskeg.

27 ~~(xvii) Rich conifer swamp.~~

- 1 ~~———— (xviii) Relict conifer swamp.~~
 2 ~~———— (xix) Hardwood-conifer swamp.~~
 3 ~~———— (xx) Northern swamp.~~
 4 ~~———— (xxi) Southern swamp.~~
 5 ~~———— (xxii) Southern floodplain forest.~~
 6 ~~———— (xxiii) Inundated shrub swamp.~~

7 **(N)** ~~(l)~~—"Water dependent" means requiring access or proximity
 8 to or siting within an aquatic site to fulfill its basic purpose.

9 **(O)** ~~(m)~~—"Wetland", **SUBJECT TO SUBDIVISION (P)**, means **A** land
 10 ~~characterized by the presence of~~ **OR WATER FEATURE, COMMONLY**
 11 **REFERRED TO AS A BOG, SWAMP, OR MARSH, INUNDATED OR SATURATED BY**
 12 water at a frequency and duration sufficient to support, and that
 13 under normal circumstances does support, **HYDRIC SOILS, AQUATIC**
 14 **LIFE, AND A PREDOMINANCE OF** wetland vegetation. ~~or aquatic life,~~
 15 ~~and is commonly referred to as a bog, swamp, or marsh, and which is~~
 16 **A LAND OR WATER FEATURE IS NOT A WETLAND UNLESS IT MEETS** any of the
 17 following:

18 **(i) IS A WATER OF THE UNITED STATES AS THAT TERM IS USED IN**
 19 **SECTION 502(7) OF THE FEDERAL WATER POLLUTION CONTROL ACT, 33 USC**
 20 **1362.**

21 **(ii)** ~~(i)~~ ~~Contiguous~~ **IS CONTIGUOUS** to the Great Lakes, ~~or~~ Lake
 22 St. Clair, **OR** an inland lake ~~or pond, or a river or stream.~~

23 **(iii)** ~~(ii)~~ ~~Not contiguous to the Great Lakes, an inland lake~~
 24 ~~or pond, or a river or stream; and more~~ **IS MORE** than 5 acres in
 25 size.

26 ~~———— (iii) Not contiguous to the Great Lakes, an inland lake or~~
 27 ~~pond, or a river or stream; and 5 acres or less in size if the~~

1 ~~department determines that protection of the area is essential to~~
2 ~~the preservation of the natural resources of the state from~~
3 ~~pollution, impairment, or destruction and the department has so~~
4 ~~notified the owner.~~

5 (iv) HAS THE DOCUMENTED PRESENCE OF AN ENDANGERED OR
6 THREATENED SPECIES UNDER THE ENDANGERED SPECIES ACT OF 1973, PUBLIC
7 LAW 93-205.

8 (v) IS A RARE AND IMPERILED WETLAND.

9 (P) "WETLAND" DOES NOT INCLUDE ANYTHING EXCLUDED FROM WATERS
10 OF THE UNITED STATES BY 40 CFR 230.3(O) (2) .

11 (2) The department and local units of government shall apply
12 the technical wetland delineation standards set forth in the United
13 States ~~army corps of engineers~~ ARMY CORPS OF ENGINEERS January 1987
14 ~~wetland delineation manual,~~ WETLAND DELINEATION MANUAL, technical
15 report Y-87-1, and appropriate regional United States ~~army corps of~~
16 ~~engineers~~ ARMY CORPS OF ENGINEERS supplements, in identifying
17 wetland boundaries under this part, including, but not limited to,
18 section 30307.

19 (3) AS USED IN SECTION 30312F:

20 (A) "ALTERED OR DEGRADED WETLAND" MEANS WETLAND THAT MEETS ANY
21 OF THE FOLLOWING CRITERIA:

22 (i) HAS BEEN PARTIALLY OR FULLY DRAINED, SUCH AS BY DITCHING,
23 TILING, OR PUMPING.

24 (ii) HAS BEEN PARTIALLY OR FULLY FILLED BY DIRECT PLACEMENT OF
25 MATERIAL IN THE WETLAND OR SIGNIFICANT SEDIMENTATION.

26 (iii) INVASIVE PLANT SPECIES DOMINATE IN A MAJORITY OF THE
27 VEGETATED SURFACE AREA OF THE WETLAND.

1 (iv) HAS UNDERGONE LAND USE CONVERSION OR ALTERATION TO
2 VEGETATION, SOIL, OR HYDROLOGY THAT CURRENTLY AFFECTS THE WETLAND
3 FUNCTIONS AND SERVICES.

4 (B) "FORMER WETLAND" MEANS LAND THAT WAS WETLAND BUT THAT HAS
5 BEEN MODIFIED TO THE POINT THAT IT NO LONGER HAS THE HYDROLOGIC
6 CHARACTERISTICS OF WETLAND.

7 (C) "NET INCREASE IN WETLAND FUNCTIONS AND SERVICES" MEANS AN
8 INCREASE IN 1 OR MORE WETLAND FUNCTIONS AND SERVICES WITH NOT MORE
9 THAN A MINIMAL DECREASE IN OTHER WETLAND FUNCTIONS AND SERVICES.

10 (D) "VOLUNTARY WETLAND RESTORATION PROJECT", SUBJECT TO
11 SUBDIVISION (E), MEANS ANY OF THE FOLLOWING:

12 (i) ACTIVITIES THAT ARE VOLUNTARILY UNDERTAKEN TO RESTORE,
13 REESTABLISH, REHABILITATE, OR ENHANCE ALTERED OR DEGRADED WETLAND
14 OR FORMER WETLAND AND THAT RESULT IN A NET INCREASE IN WETLAND
15 FUNCTIONS AND SERVICES.

16 (ii) ACTIVITIES TO MAINTAIN OR MANAGE SITES WHERE ACTIVITIES
17 DESCRIBED IN SUBPARAGRAPH (i) HAVE TAKEN PLACE, INCLUDING SITES
18 RESTORED BEFORE OCTOBER 1, 1980, THE EFFECTIVE DATE OF FORMER 1979
19 PA 203.

20 (E) VOLUNTARY WETLAND RESTORATION PROJECT DOES NOT INCLUDE AN
21 ACTIVITY UNDERTAKEN TO FULFILL, CURRENTLY OR IN THE FUTURE, A
22 FEDERAL, STATE, OR LOCAL WETLAND PERMIT MITIGATION REQUIREMENT.

23 (F) "WETLAND FUNCTIONS AND SERVICES" MEANS ANY OF THE
24 FOLLOWING:

25 (i) WETLAND HYDROLOGY THAT APPROXIMATES THE PREDISTURBANCE
26 CONDITION OR THAT EMULATES THE NATURAL CONDITION OF THE WETLAND.

27 (ii) FISH AND WILDLIFE HABITAT QUALITY OR QUANTITY.

1 (iii) PLANT COMMUNITY QUALITY, CHARACTERIZED BY NATIVE
2 VEGETATION TYPES AND DIVERSITY.

3 (iv) WATER- AND SOIL-RELATED FUNCTIONS OF THE WETLAND, SUCH AS
4 NUTRIENT REMOVAL, SEDIMENT RETENTION, FLOOD CONTROL, OR GROUNDWATER
5 RECHARGE.

6 (v) RECREATIONAL USE OF THE WETLAND, INCLUDING, BUT NOT
7 LIMITED TO, FISHING, HUNTING, TRAPPING, AND BIRDWATCHING.

8 Sec. 30304. Except as otherwise provided in this part or by a
9 permit issued by the department under ~~sections 30306 to 30314~~ **THIS**
10 **PART** and pursuant to part 13, a person shall not do any of the
11 following:

12 (a) Deposit or permit the placing of fill material in a
13 wetland.

14 (b) Dredge, remove, or permit the removal of soil or minerals
15 from a wetland.

16 (c) Construct, operate, or maintain any use or development in
17 a wetland.

18 (d) Drain surface water from a wetland.

19 Sec. 30305. (1) Activities that require a permit under part
20 325 or part 301 or a discharge that is authorized by a discharge
21 permit under section 3112 or 3113 do not require a permit under
22 this part.

23 (2) The following uses are allowed in a wetland without a
24 permit subject to other laws of this state and the owner's
25 regulation:

26 (a) Fishing, trapping, or hunting.

27 (b) Swimming or boating.

1 (c) Hiking.

2 (d) Grazing of animals, including fencing and post placement
3 if the fence is designed to control livestock, does not exceed 11
4 feet in height, and utilizes an amount of material that does not
5 exceed that of a woven wire fence utilizing 6-inch vertical spacing
6 and posts.

7 (e) Farming, horticulture, silviculture, lumbering, and
8 ranching activities, including plowing, irrigation, irrigation
9 ditching, seeding, cultivating, minor drainage, harvesting for the
10 production of food, fiber, and forest products, or upland soil and
11 water conservation practices. All of the following apply for the
12 purposes of this subdivision:

13 (i) Beginning October 1, 2013, to be allowed in a wetland
14 without a permit, these activities shall be part of an established
15 ongoing farming, ranching, horticultural, or silvicultural
16 operation. Farming and silvicultural activities on areas lying
17 fallow as part of a conventional rotational cycle are part of an
18 established ongoing operation, unless modifications to the
19 hydrological regime or mechanized land clearing are necessary to
20 resume operation. Activities that bring into farming, ranching,
21 horticultural, or silvicultural use an area not in any of these
22 uses, or that convert an area from a forested or silvicultural use
23 to a farming, ranching, or horticultural use, are not part of an
24 established ongoing operation.

25 (ii) Minor drainage does not include drainage associated with
26 the immediate or gradual conversion of a wetland to a nonwetland,
27 or conversion from 1 wetland use to another. Minor drainage does

1 not include the construction of a canal, ditch, dike, or other
2 waterway or structure that drains or otherwise significantly
3 modifies a stream, lake, or wetland.

4 (iii) Wetland altered under this subdivision shall not be used
5 for a purpose other than a purpose described in this section
6 without a permit from the department.

7 (f) Maintenance or operation of serviceable structures in
8 existence on October 1, 1980 or constructed pursuant to this part
9 or former 1979 PA 203.

10 (g) Construction or maintenance of farm or stock ponds.

11 (h) Maintenance of an agricultural drain, regardless of
12 outlet, if all of the following requirements are met:

13 (i) The maintenance includes only activities that maintain the
14 location, depth, and bottom width of the drain as constructed or
15 modified at any time before July 1, 2014.

16 (ii) The maintenance is performed by the landowner or pursuant
17 to the drain code of 1956, 1956 PA 40, MCL 280.1 to 280.630.

18 (iii) The maintenance does not include any modification that
19 results in additional wetland drainage or conversion of a wetland
20 to a use to which it was not previously subject.

21 (i) Maintenance of a drain that was legally established and
22 constructed pursuant to the drain code of 1956, 1956 PA 40, MCL
23 280.1 to 280.630, if the drain was constructed before January 1,
24 1973 or under a permit issued pursuant to this part. As used in
25 this subdivision, "maintenance of a drain" means the physical
26 preservation of the location, depth, and bottom width of a drain
27 and appurtenant structures to restore the function and approximate

1 capacity of the drain as constructed or modified at any time before
2 July 1, 2014, including the placement of spoils removed from the
3 drain in locations along that drain where spoils have been
4 previously placed. Maintenance of a drain under this subdivision
5 does not include any modification that results in additional
6 wetland drainage or conversion of a wetland to a use to which it
7 was not previously subject.

8 (j) Construction or maintenance of farm roads, forest roads,
9 or temporary roads for moving mining or forestry equipment, if the
10 roads are constructed and maintained in a manner to ensure that any
11 adverse effect on the wetland will be minimized. **IF THE WETLAND IS**
12 **NOT A WATER OF THE UNITED STATES AS THAT TERM IS USED IN SECTION**
13 **502(7) OF THE FEDERAL WATER POLLUTION CONTROL ACT, 33 USC 1322,**
14 **BORROW MATERIAL FOR ROAD CONSTRUCTION AND MAINTENANCE MAY BE TAKEN**
15 **FROM THE WETLAND UNLESS AN ADJACENT UPLAND SOURCE OF BORROW**
16 **MATERIAL IS AVAILABLE. IN DETERMINING WHETHER AN ALTERNATIVE WILL**
17 **MINIMIZE ANY ADVERSE EFFECT ON THE WETLAND, THE DEPARTMENT SHALL**
18 **CONSIDER COST, EXISTING TECHNOLOGY, AND LOGISTICS IN LIGHT OF**
19 **OVERALL PROJECT PURPOSES.**

20 (k) Maintenance of public streets, highways, or roads that
21 meets all of the following requirements:

22 (i) Does not include any modification that changes the
23 original location or footprint.

24 (ii) Is done in a manner that minimizes any adverse effect on
25 the wetland.

26 (l) Maintenance or repair of utility lines and associated
27 support structures that meets all of the following requirements:

1 (i) Is done in a manner that minimizes any adverse effect on
2 the wetland.

3 (ii) Does not include any modification to the character,
4 scope, or size of the originally constructed design.

5 (iii) Does not convert a wetland area to a use to which it was
6 not previously subject.

7 For the purposes of this subdivision and subdivision (m),
8 "utility line" means any pipe or pipeline used for the
9 transportation of any gaseous, liquid, liquescent, or slurry
10 substance, for any purpose, and any cable, line, or wire for the
11 transmission for any purpose of electrical energy, telephone or
12 telegraph messages, or radio or television communication.

13 (m) Installation of utility lines having a diameter of 6
14 inches or less using directional drilling or boring, or knifing-in,
15 and the placement of poles with minimal (less than 1 cubic yard)
16 structure support, if the utility lines and poles are installed in
17 a manner that minimizes any adverse effect on the wetland.
18 Directional drilling or boring under this subdivision shall meet
19 all of the following requirements:

20 (i) The top of the utility line is at least 4 feet below the
21 soil surface of the wetland. However, if the presence of rock
22 prevents the placement of the utility line at the depth otherwise
23 required by this subparagraph, the bottom of the utility line is
24 not placed higher than the top of the rock.

25 (ii) The entry and exit holes are located a sufficient
26 distance from the wetland to ensure that disturbance of the wetland
27 does not occur.

1 (iii) The operation does not result in the eruption or release
2 of any drilling fluids up through the ground and into the wetland
3 and there is an adequate plan to respond to any release of drilling
4 mud or other fill material.

5 (n) Operation or maintenance, including reconstruction of
6 recently damaged parts, of serviceable dikes and levees in
7 existence on October 1, 1980 or constructed pursuant to this part
8 or former 1979 PA 203.

9 (o) Placement of biological residuals from activities,
10 including the cutting of woody vegetation or the in-place grinding
11 of tree stumps, performed under this section within a wetland, if
12 all the biological residuals originate within that wetland.

13 (3) An activity in a wetland that was effectively drained for
14 farming before October 1, 1980 and that on and after October 1,
15 1980 has continued to be effectively drained as part of an ongoing
16 farming operation is not subject to regulation under this part.

17 (4) A wetland that is incidentally created as a result of 1 or
18 more of the following activities is not subject to regulation under
19 this part:

20 (a) Excavation as part of commercial sand, gravel, or mineral
21 mining, if the area was not a wetland before excavation. This
22 exemption from regulation applies until the property on which the
23 wetland is located meets both of the following requirements:

24 (i) Is no longer used for excavation as part of commercial
25 sand, gravel, or mineral mining.

26 (ii) Is being used for another purpose unrelated to excavation
27 as part of commercial sand, gravel, or mineral mining.

1 (b) Construction and operation of a water treatment pond,
2 lagoon, or storm water facility in compliance with the requirements
3 of state or federal water pollution control laws.

4 (c) A diked area associated with a landfill if the landfill
5 complies with the terms of the landfill construction permit and if
6 the diked area was not a wetland before diking.

7 (d) Construction of drains in upland for the sole purpose of
8 removing excess soil moisture from upland areas that are primarily
9 in agricultural use.

10 (e) Construction of roadside ditches in upland for the sole
11 purpose of removing excess soil moisture from upland.

12 (f) An agricultural soil and water conservation practice
13 designed, constructed, and maintained for the purpose of enhancing
14 water quality.

15 (5) An area that becomes contiguous to a water body created as
16 a result of commercial excavation for sand, gravel, or mineral
17 mining is not subject to regulation under this part solely because
18 it is contiguous to the created water body. This exemption from
19 regulation applies until the property on which the wetland is
20 located meets both of the following requirements:

21 (a) Is no longer used for excavation as part of commercial
22 sand, gravel, or mineral mining.

23 (b) Is being used for another purpose unrelated to excavation
24 as part of commercial sand, gravel, or mineral mining.

25 (6) Except as provided in subsection (7), the following
26 activities are not subject to regulation under this part:

27 (a) Leveling of sand, removal of vegetation, grooming of soil,

1 or removal of debris, in an area of unconsolidated material
2 predominantly composed of sand, rock, or pebbles, located between
3 the ordinary high-water mark and the water's edge.

4 (b) Mowing of vegetation between the ordinary high-water mark
5 and the water's edge.

6 (7) Subsection (6) does not apply to lands included in the
7 survey of the delta of the St. Clair River, otherwise referred to
8 as the St. Clair flats, located within Clay township, St. Clair
9 county, as provided for in 1899 PA 175.

10 (8) As used in this part, "agricultural drain" means a human-
11 made conveyance of water that meets all of the following
12 requirements:

13 (a) Does not have continuous flow.

14 (b) Flows primarily as a result of precipitation-induced
15 surface runoff or groundwater drained through subsurface drainage
16 systems.

17 (c) Serves agricultural production.

18 (d) Was constructed before January 1, 1973, or was constructed
19 in compliance with this part or former 1979 PA 203.

20 Sec. 30306. (1) Except as provided in section 30307(6), to
21 obtain a permit for a use or development listed in section 30304, a
22 person shall file an application with the department on a form
23 provided by the department. The application shall include all of
24 the following:

25 (a) The person's name and address.

26 (b) The location of the wetland.

27 (c) A description of the wetland.

1 (d) A statement and appropriate drawings describing the
2 proposed use or development.

3 (e) The wetland owner's name and address.

4 (f) An environmental assessment of the proposed use or
5 development if requested by the department. The assessment shall
6 include the effects upon wetland benefits and the effects upon the
7 water quality, flow, and levels, and the wildlife, fish, and
8 vegetation within ~~a~~**ANY** contiguous **INLAND** lake, ~~river,~~ or stream.

9 (2) For the purposes of subsection (1), a proposed use or
10 development of a wetland shall be covered by a single permit
11 application under this part if the scope, extent, and purpose of a
12 use or development are made known at the time of the application
13 for the permit.

14 (3) Except as provided in subsections (4) and (5), an
15 application for a permit submitted under subsection (1) shall be
16 accompanied by the following application fee, as applicable:

17 (a) For a project in a category of activities for which a
18 general permit is issued under section ~~30312,~~**30312 (2)**, a fee of
19 \$50.00.

20 (b) For activities included in a minor project category
21 established under section 30312(1), a fee of \$100.00.

22 (c) For a major project, including any of the following, a fee
23 of \$2,000.00:

24 (i) Filling or draining of 1 acre or more of coastal or inland
25 wetland.

26 (ii) 10,000 cubic yards or more of wetland fill.

27 (iii) A new golf course affecting wetland.

1 (iv) A subdivision affecting wetland.

2 (v) A condominium affecting wetland.

3 (d) For all other projects, a fee of \$500.00.

4 (4) A project that requires review and approval under this
5 part and 1 or more of the following is subject to only the single
6 highest fee required under this part or the following:

7 (a) Section 3104.

8 (b) Part 301.

9 (c) Part 323.

10 (d) Part 325.

11 (e) Section 117 of the land division act, 1967 PA 288, MCL
12 560.117.

13 (5) If work has been done in violation of a permit requirement
14 under this part, ~~and restoration is not ordered by the department,~~
15 the department **SHALL CONSIDER ACCEPTING AND** may accept an
16 application for a permit if the application is accompanied by a fee
17 equal to twice the application fee otherwise required under this
18 section.

19 (6) If the department determines that a permit is not required
20 under this part or denies an application for a permit under this
21 part, the department shall promptly refund the application fee paid
22 under this section.

23 (7) The department may issue a conditional permit before the
24 expiration of the 20-day period referred to in section 30307 if
25 emergency conditions warrant a project to protect property or the
26 public health, safety, or welfare.

27 Sec. 30307. (1) Within 60 days after receipt of the completed

1 application and fee, the department may hold a hearing. If a
2 hearing is held, it shall be held in the county where the wetland
3 to which the permit is to apply is located. Notice of the hearing
4 shall be ~~made~~**GIVEN** in the same manner as for the promulgation of
5 rules under the administrative procedures act of 1969, 1969 PA 306,
6 MCL 24.201 to 24.328. The department may approve or disapprove a
7 permit application without a public hearing unless a person
8 requests a hearing in writing within 20 days after the mailing of
9 notification of the permit application as required by subsection
10 (3) or unless the department determines that the permit application
11 is of significant impact so as to warrant a public hearing.

12 (2) The action taken by the department on a permit application
13 under this part ~~and~~**OR** part 13 may be appealed pursuant to the
14 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
15 24.328. A property owner may, after exhaustion of administrative
16 remedies, bring appropriate legal action in a court of competent
17 jurisdiction.

18 (3) A person who desires notification of pending permit
19 applications may make a written request to the department
20 accompanied by an annual fee of \$25.00, which shall be credited to
21 the general fund of ~~the~~**THIS** state. The department shall prepare a
22 biweekly list of the applications made during the previous 2 weeks
23 and shall promptly mail copies of the list for the remainder of the
24 calendar year to the persons who requested notice. The biweekly
25 list shall state the name and address of each applicant, the
26 location of the wetland in the proposed use or development,
27 including the size of both the proposed use or development and of

1 the wetland affected, and a summary statement of the purpose of the
2 use or development.

3 (4) A local unit of government may regulate wetland within its
4 boundaries, by ordinance, only as provided under this part. This
5 subsection is supplemental to the existing authority of a local
6 unit of government. An ordinance adopted by a local unit of
7 government pursuant to this subsection shall comply with all of the
8 following:

9 (a) The ordinance shall not provide a different definition of
10 wetland than is provided in this part, except that a wetland
11 ordinance may regulate wetland of less than 5 acres in size.

12 (b) If the ordinance regulates wetland that is smaller than 2
13 acres in size, the ordinance shall comply with section 30309.

14 (c) The ordinance shall comply with sections 30308 and 30310.

15 (d) The ordinance shall not require a permit for uses that are
16 authorized without a permit under section 30305, and shall
17 otherwise comply with this part.

18 (5) ~~Each~~**A** local unit of government that adopts an ordinance
19 regulating wetlands under subsection (4) shall notify the
20 department.

21 (6) A local unit of government that adopts an ordinance
22 regulating wetlands shall use an application form supplied by the
23 department, and each person applying for a permit shall make
24 application directly to the local unit of government. Upon receipt,
25 the local unit of government shall forward a copy of each
26 application along with any state fees that may have been submitted
27 under section 30306 to the department. The department shall begin

1 reviewing the application as provided in this part. The local unit
2 of government shall review the application pursuant to its
3 ordinance and shall modify, approve, or deny the application within
4 90 days after receipt. If a local unit of government does not
5 approve or disapprove the permit application within the time period
6 provided by this subsection, the permit application shall be
7 considered approved, and the local unit of government shall be
8 considered to have made the determinations as listed in section
9 30311. The denial of a permit shall be accompanied by a written
10 statement of all reasons for denial. The failure to supply complete
11 information with a permit application may be reason for denial of a
12 permit. If requested, the department shall inform a person whether
13 or not a local unit of government has an ordinance regulating
14 wetlands. If the department receives an application with respect to
15 a wetland located in a local unit of government that has an
16 ordinance regulating wetlands, the department immediately shall
17 forward the application to the local unit of government, which
18 shall modify, deny, or approve the application under this
19 subsection. The local unit of government shall notify the
20 department of its decision. The department shall proceed as
21 provided in this part.

22 (7) If a local unit of government does not have an ordinance
23 regulating wetlands, the department shall promptly send a copy of
24 the permit application to the local unit of government where the
25 wetland is located. The local unit of government may review the
26 application; may hold a hearing on the application; may recommend
27 approval, modification, or denial of the application to the

1 department or may notify the department that the local unit of
2 government declines to make a recommendation. The recommendation of
3 the local unit of government, if any, shall be made and returned to
4 the department ~~at any time~~ within 45 days after the local unit of
5 government's receipt of the permit application.

6 (8) In addition to the requirements of subsection (7), the
7 department shall notify the local unit of government that the
8 department has issued a permit under this part **PERTAINING TO**
9 **WETLAND LOCATED** within the jurisdiction of that local unit of
10 government within 15 days of issuance of the permit. The department
11 shall enclose a copy of the permit with the notice.

12 Sec. 30314. (1) The department shall require the holder of a
13 permit to provide information the department reasonably requires to
14 obtain compliance with this part.

15 ~~(2) Upon reasonable cause or obtaining a search warrant, the~~
16 **THE** department may enter on, upon, or through the premises on which
17 an activity listed in section 30304 is located or on which
18 information required to be maintained under subsection (1) is
19 located **UNDER ANY OF THE FOLLOWING CIRCUMSTANCES, AS APPLICABLE:**

20 **(A) UPON OBTAINING A SEARCH WARRANT, AN ADMINISTRATIVE WARRANT**
21 **ISSUED BY THE DIRECTOR OF THE DEPARTMENT, OR THE CONSENT OF THE**
22 **PERSON WHO OWNS OR CONTROLS THE PREMISES.**

23 **(B) IF THERE IS AN IMMINENT THREAT TO THE PUBLIC HEALTH OR**
24 **ENVIRONMENT.**

25 **(C) UPON REASONABLE CAUSE, IF THE WETLAND IS A WATER OF THE**
26 **UNITED STATES AS THAT TERM IS USED IN SECTION 502(7) OF THE FEDERAL**
27 **WATER POLLUTION CONTROL ACT, 33 USC 1362.**

1 Sec. 30316. (1) The attorney general may commence a civil
 2 action for appropriate relief, including injunctive relief upon
 3 request of the department under section 30315(1). An action under
 4 this subsection may be brought in the circuit court for the county
 5 of Ingham or for a county in which the defendant is located,
 6 resides, or is doing business. The court has jurisdiction to
 7 restrain the violation and to require compliance with this part. In
 8 addition to any other relief granted under this section, the court
 9 may impose a civil fine of not more than \$10,000.00 per day of
 10 violation. A person who violates an order of the court is subject
 11 to a civil fine not to exceed \$10,000.00 for each day of violation.

12 (2) A person who violates this part is guilty of a misdemeanor
 13 ~~—~~punishable by a fine of not more than \$2,500.00.

14 (3) A person who willfully or recklessly violates a condition
 15 or limitation in a permit issued by the department under this part,
 16 or a corporate officer who has knowledge of or is responsible for a
 17 violation, is guilty of a misdemeanor ~~—~~punishable by a fine of not
 18 less than \$2,500.00 ~~nor~~**OR** more than \$25,000.00 per day of
 19 violation ~~—~~or by imprisonment for not more than 1 year, or both. A
 20 person who ~~violates~~**COMMITS A VIOLATION DESCRIBED IN** this section a
 21 second or subsequent time is guilty of a felony ~~—~~punishable by a
 22 fine of not more than \$50,000.00 for each day of violation ~~—~~or by
 23 imprisonment for not more than 2 years, or both.

24 (4) In addition to the **CIVIL FINES AND** penalties provided
 25 under subsections (1), (2), and (3), the court may order a person
 26 who violates this part to restore as nearly as possible the wetland
 27 that was affected by the violation to its original condition

1 immediately before the violation. The restoration may include the
2 removal of fill material deposited in the wetland or the
3 replacement of soil, sand, or minerals.

4 **(5) THE AWARD OF ATTORNEY FEES IN A CIVIL ACTION UNDER THIS**
5 **PART IS SUBJECT TO APPLICABLE PROVISIONS OF CHAPTER 24 OF THE**
6 **REVISED JUDICATURE ACT OF 1961, 1961 PA 235, MCL 600.2401 TO**
7 **600.2461. HOWEVER, REGARDLESS OF WHETHER THIS STATE'S POSITION WAS**
8 **SUBSTANTIALLY JUSTIFIABLE, EXPERT PROFESSIONAL WITNESS FEES SHALL**
9 **BE AWARDED TO A LANDOWNER THAT PREVAILS AGAINST THIS STATE ON THE**
10 **ISSUE OF WHETHER THE LANDOWNER'S PROPERTY IS WETLAND.**

11 Sec. 30319. (1) The department shall promulgate and enforce
12 rules to implement this part.

13 (2) If a person is aggrieved by any action or inaction of the
14 department, the person may request a formal hearing on the matter
15 involved. The hearing shall be conducted by the department pursuant
16 to the administrative procedures act of 1969, ~~Act No. 306 of the~~
17 ~~Public Acts of 1969, being sections~~ **1969 PA 306, MCL 24.201 to**
18 **24.328. ~~of the Michigan Compiled Laws.~~**

19 **(3) THE AWARD OF COSTS IN A CONTESTED CASE UNDER THIS PART AND**
20 **THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.201**
21 **TO 24.328, IS SUBJECT TO CHAPTER 8 OF THE ADMINISTRATIVE PROCEDURES**
22 **ACT OF 1969, MCL 24.321 TO 24.328. HOWEVER, REGARDLESS OF WHETHER**
23 **THE DEPARTMENT'S POSITION WAS SUBSTANTIALLY JUSTIFIABLE, EXPERT**
24 **PROFESSIONAL WITNESS FEES SHALL BE AWARDED TO A LANDOWNER THAT**
25 **PREVAILS ON THE ISSUE OF WHETHER THE LANDOWNER'S PROPERTY IS**
26 **WETLAND.**

27 **(4) ~~(3)~~—A determination, action, or inaction by the department**

1 following the hearing is subject to judicial review as provided in
2 ~~Act No. 306 of the Public Acts of 1969.~~ **THE ADMINISTRATIVE**
3 **PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.201 TO 24.328.**

4 **(5) A LANDOWNER MAY CHALLENGE THE CLASSIFICATION AS WETLAND OF**
5 **A LAND OR WATER FEATURE OWNED BY THAT PERSON BEFORE AN**
6 **ENVIRONMENTAL PERMIT PANEL UNDER SECTION 1315 IN THE SAME MANNER**
7 **AND SUBJECT TO THE SAME PROCEEDINGS AS APPLY TO A PERMIT APPLICANT.**

8 **(6)** ~~(4)~~ This section does not limit the right of a wetland
9 owner to institute proceedings in any circuit of the circuit court
10 of the state against any person ~~when~~ **IF** necessary to protect the
11 wetland owner's rights.

12 Sec. 30321. (1) The department shall make or cause to be made
13 a preliminary inventory of all wetland in this state on a county by
14 county basis and file the inventory with the agricultural extension
15 office, register of deeds, and county clerk.

16 ~~—— (2) At least 2 hearings shall be held in each state planning~~
17 ~~and development region created by Executive Directive No. 1973-1.~~
18 ~~The hearing shall be held by the department after publication and~~
19 ~~due notice so that interested parties may comment on the inventory.~~
20 ~~After the hearings, the department shall issue a final inventory,~~
21 ~~which shall be sent to and kept by the agricultural extension~~
22 ~~office, register of deeds, and county clerk. Legislators shall~~
23 ~~receive an inventory of a county or regional classification for~~
24 ~~their districts including both preliminary and final inventories~~
25 ~~unless the legislators request not to receive the materials.~~

26 **(2)** ~~(3)~~ A person who owns or leases a parcel of property may
27 request that the department of environmental quality assess whether

1 the parcel of property or a portion of the parcel is wetland. The
2 request shall satisfy all of the following requirements:

3 (a) Be made on a form provided by the department.

4 (b) Be signed by the person who owns or leases the property.

5 (c) Contain a legal description of the parcel and, if only a
6 portion of the parcel is to be assessed, a description of the
7 portion to be assessed.

8 (d) Include a map showing the location of the parcel.

9 (e) Grant the department or its agent permission to enter on
10 the parcel for the purpose of conducting the assessment.

11 **(3)** ~~(4)~~—The department shall assess the parcel within a
12 reasonable time after the request is made. The department may enter
13 upon the parcel to conduct the assessment. Upon completion of the
14 assessment, the department shall provide the person with a written
15 assessment report. The assessment report shall do all of the
16 following:

17 (a) Identify in detail the location of any wetland in the area
18 assessed.

19 (b) If wetland is present in the area assessed, describe the
20 types of activities that require a permit under this part.

21 (c) If the assessment report determines that the area assessed
22 or part of the area assessed is not wetland, state that the
23 department lacks jurisdiction under this part as to the area that
24 the report determines is not wetland and that this determination is
25 binding on the department for 3 years from the date of the
26 assessment.

27 (d) Contain the date of the assessment.

1 (e) Advise that the person may request the department to
2 reassess the parcel or any part of the parcel that the person
3 believes was erroneously determined to be wetland if the request is
4 accompanied by evidence pertaining to wetland vegetation, soils, or
5 hydrology that is different from or in addition to the information
6 relied upon by the department.

7 (f) Advise that the assessment report does not constitute a
8 determination of wetland that may be regulated under local
9 ordinance or wetland areas that may be regulated under federal law
10 and advise how a determination of wetland areas regulated under
11 federal law may be obtained.

12 (g) List regulatory programs that may limit land use
13 activities on the parcel, advise that the list is not exhaustive,
14 and advise that the assessment report does not constitute a
15 determination of jurisdiction under those programs. The regulatory
16 programs listed shall be those under the following parts:

17 (i) Part 31, with respect to floodplains and floodways.

18 (ii) Part 91.

19 (iii) Part 301.

20 (iv) Part 323.

21 (v) Part 325.

22 (vi) Part 353.

23 **(4)** ~~(5)~~—A wetland is not contiguous to the Great Lakes or Lake
24 St. Clair, an inland lake, ~~or pond,~~ or a ~~river or~~ stream if the
25 department determines that there is no direct physical contact and
26 no surface water or interflowing groundwater connection to such a
27 body of water. **THIS SUBSECTION APPLIES ONLY TO A WETLAND THAT IS A**

1 WATER OF THE UNITED STATES.

2 (5) A WETLAND IS NOT CONTIGUOUS TO THE GREAT LAKES OR LAKE ST.
3 CLAIR, AN INLAND LAKE, OR A STREAM IF THE DEPARTMENT DETERMINES
4 THAT THERE IS NO CONTINUOUS SURFACE WATER CONNECTION TO OR SIMILAR,
5 NATURAL, DIRECT PHYSICAL CONNECTION WITH SUCH A BODY OF WATER.

6 (6) A person may request that, as part of an assessment, the
7 department make a determination whether a wetland is ~~not~~ contiguous
8 TO THE GREAT LAKES, LAKE ST. CLAIR, AN INLAND LAKE, OR A STREAM.
9 The department shall make the determination in writing within 30
10 days after an on-site evaluation.

11 (7) ~~(6)~~—The department shall not consider an agricultural
12 drain, as defined in section 30305, in determining whether a
13 wetland is contiguous to the Great Lakes or Lake St. Clair, an
14 inland lake or pond, or a river or stream.

15 (8) ~~(7)~~—A drainage structure such as a culvert, ditch, or
16 channel, in and of itself, is not a wetland. A temporary
17 obstruction of drainage, in and of itself, is not a wetland until
18 the presence of water is of sufficient frequency and duration to be
19 identified as wetland pursuant to section 30301(2).

20 (9) ~~(8)~~—A person may request the department to reassess any
21 area assessed under subsections (2) AND (3) ~~and (4)~~ that the person
22 believes the department erroneously determined to be wetland. The
23 requirements of subsections (2) AND (3) ~~and (4)~~ apply to the
24 request, assessment, and assessment report. However, the request
25 shall be accompanied by evidence pertaining to wetland vegetation,
26 soils, or hydrology that is different from or in addition to the
27 information relied upon by the department. The assessment report

1 shall not contain the information required by subsection
2 ~~(4)(e)~~. **(3) (E)** .

3 **(10)** ~~(9)~~—If an assessment report determines that the area
4 assessed or part of the area assessed is not a wetland regulated by
5 the department under this part, then the area determined by the
6 assessment report not to be a wetland is not a wetland regulated by
7 the department under this part for a period of 3 years after the
8 date of the assessment.

9 **(11)** ~~(10)~~—The department may charge a fee for an assessment
10 requested under subsection ~~(3)~~ **(2)** based upon the cost to the
11 department of conducting an assessment.

12 **(12)** ~~(11)~~—There shall be no fee for an assessment under the
13 blueberry production assistance program.

14 **(13)** ~~(12)~~—The department shall, upon request of the applicant
15 and without charge, provide to the applicant a copy of any
16 delineation forms completed by the department associated with a
17 permit application.

18 Sec. 32301. As used in this part:

19 (a) "Connecting waterway" means the St. Marys river, Detroit
20 river, St. Clair river, or Lake St. Clair.

21 (b) "Environmental area" means an area of the shoreland
22 determined by the department on the basis of studies and surveys to
23 be necessary for the preservation and maintenance of fish and
24 wildlife.

25 (c) "High-risk area" means an area of the shoreland that is
26 determined by the department on the basis of studies and surveys to
27 be subject to erosion.

1 (d) "Land to be zoned or regulated" or "land to be zoned"
2 means the land in this state that borders or is adjacent to a Great
3 Lake or a connecting waterway and that, except for flood risk
4 areas, is situated within 1,000 feet landward from the ordinary
5 high-water mark as defined in section 32501, land bordering or
6 adjacent to waters affected by levels of the Great Lakes landward
7 of the ordinary high-water mark as defined by section ~~30101(f)~~,
8 **30101**, and land between the ordinary high-water mark and the
9 water's edge.

10 (e) "Shoreland" means the land, water, and land beneath the
11 water that is in close proximity to the shoreline of a Great Lake
12 or a connecting waterway.

13 (f) "Shoreline" means that area of the shorelands where land
14 and water meet.

15 (g) "Flood risk area" means the area of the shoreland that is
16 determined by the department on the basis of studies and surveys to
17 be subject to flooding from effects of levels of the Great Lakes
18 and is not limited to 1,000 feet.

19 Enacting section 1. This amendatory act takes effect 90 days
20 after the date it is enacted into law.