

**SUBSTITUTE FOR
SENATE BILL NO. 1211**

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 1511, 30101, 30112, 30301, 30304, 30305, 30306, 30307, 30311, 30314, 30316, 30319, 30321, and 32301 (MCL 324.1511, 324.30101, 324.30112, 324.30301, 324.30304, 324.30305, 324.30306, 324.30307, 324.30311, 324.30314, 324.30316, 324.30319, 324.30321, and 324.32301), 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, 30311, 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. 1511. (1) Subject to subsection (2) and notwithstanding

1 any other provision of this act, before initiating a civil
2 enforcement action under this act against a person, ~~holding a~~
3 ~~permit,~~ the department shall ~~contact~~ **DO BOTH OF THE FOLLOWING:**

4 (A) BEGINNING MAY 1, 2019, PROVIDE THE PERSON IN WRITING A
5 LIST OF EACH SPECIFIC PROVISION OF STATUTE, RULE, OR PERMIT THAT
6 THE PERSON IS ALLEGED TO HAVE VIOLATED AND A STATEMENT OF THE FACTS
7 CONSTITUTING THE VIOLATION.

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

16 (2) Subsection (1) does not apply under any of the following
17 circumstances:

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

19 (b) The department determines that the violation that is the
20 subject of the potential civil enforcement action constitutes an
21 imminent and substantial endangerment of the public health, safety,
22 or welfare or of the environment.

23 (3) As used in this section:

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

27 (b) "Permit" means a permit or operating license issued under

1 this act.

2 Sec. 30101. As used in this part:

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

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

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

12 (d) "Department" means the department of environmental
13 quality.

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

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

19 (g) "Height of the dam" means the difference in elevation
20 measured vertically between the natural bed of an inland lake or
21 stream at the downstream toe of the dam, or, if it is not across a
22 stream channel or watercourse, from the lowest elevation of the
23 downstream toe of the dam, to the design flood elevation or to the
24 lowest point of the top of the dam, whichever is less.

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

27 ~~——(i) "Inland lake or stream" means a natural or artificial~~

1 ~~lake, pond, or impoundment; a river, stream, or creek which may or~~
2 ~~may not be serving as a drain as defined by the drain code of 1956,~~
3 ~~1956 PA 40, MCL 280.1 to 280.630; or any other body of water that~~
4 ~~has definite banks, a bed, and visible evidence of a continued flow~~
5 ~~or continued occurrence of water, including the St. Marys, St.~~
6 ~~Clair, and Detroit rivers. Inland lake or stream does not include~~
7 ~~the Great Lakes, Lake St. Clair, or a lake or pond that has a~~
8 ~~surface area of less than 5 acres.~~

9 (I) "INLAND LAKE", SUBJECT TO SUBDIVISION (J), MEANS A
10 PERMANENT ARTIFICIAL OR A NATURAL INLAND LAKE, POND, OR IMPOUNDMENT
11 THAT MEETS BOTH OF THE FOLLOWING REQUIREMENTS:

12 (i) HAS DEFINITE BANKS, A BED, AND VISIBLE EVIDENCE OF A
13 CONTINUED OCCURRENCE OF WATER.

14 (ii) IS EITHER MORE THAN 5 ACRES IN SIZE OR WATERS OF THE
15 UNITED STATES AS THAT TERM IS USED IN SECTION 502(7) OF THE FEDERAL
16 WATER POLLUTION CONTROL ACT, 33 USC 1362.

17 (J) "INLAND LAKE" DOES NOT INCLUDE ANY OF THE FOLLOWING:

18 (i) THE GREAT LAKES OR LAKE ST. CLAIR.

19 (ii) A FEATURE USED FOR TREATING WASTEWATER OR STORM WATER.

20 (iii) ARTIFICIAL FEATURES CREATED IN LAND UNREGULATED BY THIS
21 PART AND USED FOR COOLING OR STORING WATER, FARM OR LIVESTOCK
22 IRRIGATION OR WATERING, LOG CLEANING, SWIMMING, MINING OR
23 CONSTRUCTION ACTIVITIES, OR RAISING FISH AND OTHER AQUATIC SPECIES.

24 (iv) AN ARTIFICIALLY IRRIGATED OR FLOODED AREA THAT WILL
25 REVERT TO DRY LAND IF THE APPLICATION OF WATER TO THAT AREA CEASES.

26 (K) ~~(j)~~ "Marina" means a facility that is owned or operated by
27 a person, extends into or over an inland lake or stream, and offers

1 service to the public or members of the marina for docking,
2 loading, or other servicing of recreational watercraft.

3 (I) ~~(k)~~—"Minor offense" means either of the following
4 violations of this part if the project involved in the offense is a
5 minor project or the department determines that restoration of the
6 affected property is not required:

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

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

9 (M) ~~(l)~~—"Mooring structures" means structures used to moor
10 watercraft, including, but not limited to, docks, piers, pilings,
11 mooring anchors, lines and buoys, and boat hoists.

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

22 (O) ~~(n)~~—"Project" means an activity that requires a permit
23 pursuant to section 30102.

24 (P) ~~(o)~~—"Property owners' association" means any group of
25 organized property owners publishing a directory of their
26 membership, the majority of which are riparian owners and are
27 located on the inland lake or stream that is affected by the

1 proposed project.

2 (Q) ~~(p)~~ "Reconfigure" means to, without expanding the marina,
3 do either of the following:

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

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

10 (R) ~~(q)~~ "Riparian interest area" means that portion of an
11 inland lake or stream over which a riparian owner has an ownership
12 interest.

13 (S) ~~(r)~~ "Riparian owner" means a person who has riparian
14 rights.

15 (T) ~~(s)~~ "Riparian rights" means those rights which are
16 associated with the ownership of the bank or shore of an inland
17 lake or stream.

18 (U) ~~(t)~~ "Seasonal structure" includes any type of dock, boat
19 hoist, ramp, raft, or other recreational structure that is placed
20 into an inland lake or stream and removed at the end of the boating
21 season.

22 (V) ~~(u)~~ "Seawall" means a vertically sloped wall constructed
23 to break the force of waves and retain soil for the purpose of
24 shore protection.

25 (W) "STREAM", SUBJECT TO SUBDIVISION (X), MEANS A PERMANENT
26 ARTIFICIAL OR A NATURAL RIVER, STREAM, OR CREEK THAT MEETS EITHER
27 OF THE FOLLOWING REQUIREMENTS:

1 (i) IS A WATER OF THE UNITED STATES AS THAT TERM IS USED IN
2 SECTION 502(7) OF THE FEDERAL WATER POLLUTION CONTROL ACT, 33 USC
3 1362.

4 (ii) HAS DEFINITE BANKS, A BED, AND A CONTINUED FLOW OF WATER.

5 (X) "STREAM" DOES NOT INCLUDE ANY OF THE FOLLOWING:

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

8 (ii) AN ARTIFICIALLY IRRIGATED OR FLOODED AREA THAT WILL
9 REVERT TO DRY LAND IF THE APPLICATION OF WATER TO THAT AREA CEASES.

10 (iii) AN EROSIONAL FEATURE INCLUDING GULLIES, RILLS, AND OTHER
11 EPHEMERAL FEATURES.

12 (iv) A STORM WATER OR WASTEWATER CONTROL FEATURE CONSTRUCTED
13 TO CONVEY, TREAT, OR STORE STORM WATER OR WASTEWATER THAT IS
14 CREATED ON LAND UNREGULATED BY THIS PART.

15 (Y) ~~(v)~~—"Structure" includes a wharf, dock, pier, seawall,
16 dam, weir, stream deflector, breakwater, groin, jetty, sewer,
17 pipeline, cable, and bridge.

18 (Z) ~~(w)~~—"Upland" means the land area that lies above the
19 ordinary high-water mark.

20 Sec. 30112. (1) The department may commence a civil action in
21 the circuit court of the county in which a violation occurs to
22 enforce compliance with this part, to restrain violation of this
23 part or any action contrary to an order of the department denying a
24 permit, to enjoin the further performance of, or order the removal
25 of, any project that is undertaken contrary to this part or after
26 denial of a permit by the department, or to order the restoration
27 of the affected area to its prior condition.

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

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

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

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

23 (6) Any civil ~~penalty~~ **SANCTION** assessed, sought, or agreed to
24 by the department shall be appropriate to the violation.

25 **(7) A CIVIL OR CRIMINAL FINE AUTHORIZED TO BE IMPOSED UNDER**
26 **THIS SECTION FOR EACH DAY OF VIOLATION SHALL NOT BE IMPOSED FOR A**
27 **DAY OF VIOLATION OCCURRING AFTER COMMENCEMENT OF BOTH THE**

1 ENFORCEMENT ACTION AND NEGOTIATIONS BETWEEN THE DEPARTMENT OR THE
2 ATTORNEY GENERAL OR OTHER PROSECUTING ATTORNEY AND THE VIOLATOR
3 OVER THE ENFORCEMENT ACTION.

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

5 (A) "CONTIGUOUS TO" MEANS HAVING A CONTINUOUS SURFACE WATER
6 CONNECTION OR A SIMILAR, NATURAL, DIRECT PHYSICAL CONNECTION WITH
7 THE GREAT LAKES, LAKE ST. CLAIR, OR AN INLAND LAKE OR STREAM. A
8 WETLAND IS PER SE CONTIGUOUS TO AN INLAND LAKE OR STREAM IF IT IS
9 LOCATED WITHIN 500 FEET OF THE ORDINARY HIGH-WATER MARK OF AN
10 INLAND LAKE OR STREAM, UNLESS THERE IS NO SURFACE WATER OR
11 GROUNDWATER CONNECTION. A WETLAND IS PER SE CONTIGUOUS TO THE GREAT
12 LAKES OR LAKE ST. CLAIR IF IT IS LOCATED WITHIN 1,000 FEET OF THE
13 ORDINARY HIGH-WATER MARK OF A GREAT LAKE OR LAKE ST. CLAIR, UNLESS
14 THERE IS NO SURFACE OR GROUNDWATER CONNECTION.

15 (B) ~~(a)~~—"Department" means the department of environmental
16 quality.

17 (C) ~~(b)~~—"Director" means the director of the department.

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

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

26 (F) "HYDRIC SOIL" MEANS A SOIL THAT FORMED UNDER CONDITIONS OF
27 SATURATION, FLOODING, OR PONDING LONG ENOUGH DURING THE GROWING

1 **SEASON TO DEVELOP ANAEROBIC CONDITIONS IN THE UPPER PART.**

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

6 (i) The wetland's landscape position and hydrologic
7 characteristics.

8 (ii) The surrounding landscape.

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

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

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

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

26 (K) ~~(i)~~—"Person" means an individual, sole proprietorship,
27 partnership, corporation, association, municipality, this state, an

1 instrumentality or agency of this state, the federal government, an
2 instrumentality or agency of the federal government, or other legal
3 entity.

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

7 (M) ~~(k)~~—"Rare and imperiled wetland" means any of the
8 following:

- 9 (i) Great Lakes marsh.
- 10 (ii) Southern wet meadow.
- 11 (iii) Inland salt marsh.
- 12 (iv) Intermittent wetland or boggy seepage wetland.
- 13 (v) Coastal plain marsh.
- 14 (vi) Interdunal wetland.
- 15 (vii) Lakeplain wet prairie.
- 16 (viii) Lakeplain wet-mesic prairie.
- 17 (ix) Northern wet-mesic prairie.
- 18 (x) Wet-mesic prairie.
- 19 (xi) Wet prairie.
- 20 (xii) Prairie fen.
- 21 (xiii) Northern fen.
- 22 (xiv) Patterned fen.
- 23 (xv) Poor fen.
- 24 (xvi) Muskeg.
- 25 (xvii) Rich conifer swamp.
- 26 (xviii) Relict conifer swamp.
- 27 (xix) Hardwood-conifer swamp.

1 (xx) Northern swamp.

2 (xxi) Southern swamp.

3 (xxii) Southern floodplain forest.

4 (xxiii) Inundated shrub swamp.

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

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

16 (i) Contiguous to the Great Lakes, ~~or Lake St. Clair,~~ **OR** an
17 inland lake ~~or pond, or a river or stream.~~

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

20 ~~—— (iii) Not contiguous to the Great Lakes, an inland lake or~~
21 ~~pond, or a river or stream; and 5 acres or less in size if the~~
22 ~~department determines that protection of the area is essential to~~
23 ~~the preservation of the natural resources of the state from~~
24 ~~pollution, impairment, or destruction and the department has so~~
25 ~~notified the owner.~~

26 (iii) **A WATER OF THE UNITED STATES AS THAT TERM IS USED IN**
27 **SECTION 502(7) OF THE FEDERAL WATER POLLUTION CONTROL ACT, 33 USC**

1 1362.

2 (P) "WETLAND" DOES NOT INCLUDE ANY OF THE FOLLOWING:

3 (i) ANYTHING EXCLUDED FROM WATERS OF THE UNITED STATES BY 40
4 CFR 230.3(O)(2).

5 (ii) AN ARTIFICIALLY IRRIGATED OR FLOODED AREA THAT WILL
6 REVERT TO DRY LAND IF THE APPLICATION OF WATER TO THAT AREA CEASES.

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

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

18 (a) Deposit or permit the placing of fill material in a
19 wetland.

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

22 (c) Construct, operate, or maintain any ~~use or~~ development in
23 a wetland.

24 (d) Drain surface water from a wetland.

25 Sec. 30305. (1) Activities that require a permit under part
26 325 or part 301 or a discharge that is authorized by a discharge
27 permit under section 3112 or 3113 do not require a permit under

1 this part.

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

5 (a) Fishing, trapping, or hunting.

6 (b) Swimming or boating.

7 (c) Hiking.

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

13 (e) Farming, horticulture, silviculture, lumbering, and
14 ranching activities, including plowing, irrigation, irrigation
15 ditching, seeding, cultivating, minor drainage, harvesting for the
16 production of food, fiber, and forest products, or upland soil and
17 water conservation practices. All of the following apply for the
18 purposes of this subdivision:

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

1 uses, or that convert an area from a forested or silvicultural use
2 to a farming, ranching, or horticultural use, are not part of an
3 established ongoing operation.

4 (ii) Minor drainage does not include drainage associated with
5 the immediate or gradual conversion of a wetland to a nonwetland,
6 or conversion from 1 wetland use to another. Minor drainage does
7 not include the construction of a canal, ditch, dike, or other
8 waterway or structure that drains or otherwise significantly
9 modifies a stream, lake, or wetland.

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

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

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

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

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

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

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

27 (i) Maintenance of a drain that was legally established and

1 constructed pursuant to the drain code of 1956, 1956 PA 40, MCL
2 280.1 to 280.630, if the drain was constructed before January 1,
3 1973 or under a permit issued pursuant to this part. As used in
4 this subdivision, "maintenance of a drain" means the physical
5 preservation of the location, depth, and bottom width of a drain
6 and appurtenant structures to restore the function and approximate
7 capacity of the drain as constructed or modified at any time before
8 July 1, 2014, including the placement of spoils removed from the
9 drain in locations along that drain where spoils have been
10 previously placed. Maintenance of a drain under this subdivision
11 does not include any modification that results in additional
12 wetland drainage or conversion of a wetland to a use to which it
13 was not previously subject.

14 (j) Construction or maintenance of farm roads, forest roads,
15 or temporary roads for moving mining or forestry equipment, if the
16 roads are constructed and maintained in a manner to ensure that any
17 adverse effect on the wetland will be minimized. **BORROW MATERIAL**
18 **FOR THE ROAD CONSTRUCTION OR MAINTENANCE SHALL BE TAKEN FROM UPLAND**
19 **SOURCES WHENEVER FEASIBLE IF THE WETLAND IS A WATER OF THE UNITED**
20 **STATES. ON-SITE BORROW MATERIAL MAY BE USED IF THE WETLAND IS NOT A**
21 **WATER OF THE UNITED STATES. IN DETERMINING WHETHER AN ALTERNATIVE**
22 **WILL MINIMIZE ANY ADVERSE EFFECT ON THE WETLAND, THE DEPARTMENT**
23 **SHALL CONSIDER COST, EXISTING TECHNOLOGY, AND LOGISTICS IN LIGHT OF**
24 **OVERALL PROJECT PURPOSES.**

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

27 (i) Does not include any modification that changes the

1 original location or footprint.

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

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

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

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

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

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

18 (m) Installation of utility lines having a diameter of 6
19 inches or less using directional drilling or boring, or knifing-in,
20 and the placement of poles with minimal (less than 1 cubic yard)
21 structure support, if the utility lines and poles are installed in
22 a manner that minimizes any adverse effect on the wetland.

23 Directional drilling or boring under this subdivision shall meet
24 all of the following requirements:

25 (i) The top of the utility line is at least 4 feet below the
26 soil surface of the wetland. However, if the presence of rock
27 prevents the placement of the utility line at the depth otherwise

1 required by this subparagraph, the bottom of the utility line is
2 not placed higher than the top of the rock.

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

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

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

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

18 (3) An activity in a wetland that was effectively drained for
19 farming before October 1, 1980 and that on and after October 1,
20 1980 has continued to be effectively drained as part of an ongoing
21 farming operation is not subject to regulation under this part.

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

25 (a) Excavation as part of commercial sand, gravel, or mineral
26 mining, if the area was not a wetland before excavation. This
27 exemption from regulation applies until the property on which the

1 wetland is located meets both of the following requirements:

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

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

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

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

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

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

17 (f) An agricultural soil and water conservation practice
18 designed, constructed, and maintained for the purpose of enhancing
19 water quality.

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

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

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

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

5 (a) Leveling of sand, removal of vegetation, grooming of soil,
6 or removal of debris, in an area of unconsolidated material
7 predominantly composed of sand, rock, or pebbles, located between
8 the ordinary high-water mark and the water's edge.

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

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

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

18 (a) Does not have continuous flow.

19 (b) Flows primarily as a result of precipitation-induced
20 surface runoff or groundwater drained through subsurface drainage
21 systems.

22 (c) Serves agricultural production.

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

25 Sec. 30306. (1) Except as provided in section 30307(6), to
26 obtain a permit for a ~~use or~~ development listed in section 30304, a
27 person shall file an application with the department on a form

1 provided by the department. The application shall include all of
2 the following:

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

4 (b) The location of the wetland.

5 (c) A description of the wetland.

6 (d) A statement and appropriate drawings describing the
7 proposed ~~use or~~ development.

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

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

14 (2) For the purposes of subsection (1), a proposed ~~use or~~
15 development of a wetland shall be covered by a single permit
16 application under this part if the scope, extent, and purpose of a
17 ~~use or~~ development are made known at the time of the application
18 for the permit.

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

22 (a) For a project in a category of activities for which a
23 general permit is issued under section ~~30312,~~ **30312(2)**, a fee of
24 \$50.00.

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

27 (c) For a major project, including any of the following, a fee

1 of \$2,000.00:

2 (i) Filling or draining of 1 acre or more of coastal or inland
3 wetland.

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

5 (iii) A new golf course affecting wetland.

6 (iv) A subdivision affecting wetland.

7 (v) A condominium affecting wetland.

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

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

12 (a) Section 3104.

13 (b) Part 301.

14 (c) Part 323.

15 (d) Part 325.

16 (e) Section 117 of the land division act, 1967 PA 288, MCL
17 560.117.

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

24 (6) If the department determines that a permit is not required
25 under this part or denies an application for a permit under this
26 part, the department shall promptly refund the application fee paid
27 under this section.

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

5 Sec. 30307. (1) Within 60 days after receipt of the completed
6 application and fee, the department may hold a hearing. If a
7 hearing is held, it shall be held in the county where the wetland
8 to which the permit is to apply is located. Notice of the hearing
9 shall be ~~made~~**GIVEN** in the same manner as for the promulgation of
10 rules under the administrative procedures act of 1969, 1969 PA 306,
11 MCL 24.201 to 24.328. The department may approve or disapprove a
12 permit application without a public hearing unless a person
13 requests a hearing in writing within 20 days after the mailing of
14 notification of the permit application as required by subsection
15 (3) or unless the department determines that the permit application
16 is of significant impact so as to warrant a public hearing.

17 (2) The action taken by the department on a permit application
18 under this part ~~and~~**OR** part 13 may be appealed pursuant to the
19 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
20 24.328. A property owner may, after exhaustion of administrative
21 remedies, bring appropriate legal action in a court of competent
22 jurisdiction.

23 (3) A person who desires notification of pending permit
24 applications may make a written request to the department
25 accompanied by an annual fee of \$25.00, which shall be credited to
26 the general fund of ~~the~~**THIS** state. The department shall prepare a
27 biweekly list of the applications made during the previous 2 weeks

1 and shall promptly mail copies of the list for the remainder of the
2 calendar year to the persons who requested notice. The biweekly
3 list shall state the name and address of each applicant, the
4 location of the wetland in the proposed ~~use or~~ development,
5 including the size of both the proposed ~~use or~~ development and of
6 the wetland affected, and a summary statement of the purpose of the
7 ~~use or~~ development.

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

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

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

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

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

23 (5) ~~Each~~ A local unit of government that adopts an ordinance
24 regulating wetlands under subsection (4) shall notify the
25 department.

26 (6) A local unit of government that adopts an ordinance
27 regulating wetlands shall use an application form supplied by the

1 department, and each person applying for a permit shall make
2 application directly to the local unit of government. Upon receipt,
3 the local unit of government shall forward a copy of each
4 application along with any state fees that may have been submitted
5 under section 30306 to the department. The department shall begin
6 reviewing the application as provided in this part. The local unit
7 of government shall review the application pursuant to its
8 ordinance and shall modify, approve, or deny the application within
9 90 days after receipt. If a local unit of government does not
10 approve or disapprove the permit application within the time period
11 provided by this subsection, the permit application shall be
12 considered approved, and the local unit of government shall be
13 considered to have made the determinations as listed in section
14 30311. The denial of a permit shall be accompanied by a written
15 statement of all reasons for denial. The failure to supply complete
16 information with a permit application may be reason for denial of a
17 permit. If requested, the department shall inform a person whether
18 or not a local unit of government has an ordinance regulating
19 wetlands. If the department receives an application with respect to
20 a wetland located in a local unit of government that has an
21 ordinance regulating wetlands, the department immediately shall
22 forward the application to the local unit of government, which
23 shall modify, deny, or approve the application under this
24 subsection. The local unit of government shall notify the
25 department of its decision. The department shall proceed as
26 provided in this part.

27 (7) If a local unit of government does not have an ordinance

1 regulating wetlands, the department shall promptly send a copy of
2 the permit application to the local unit of government where the
3 wetland is located. The local unit of government may review the
4 application; may hold a hearing on the application; may recommend
5 approval, modification, or denial of the application to the
6 department or may notify the department that the local unit of
7 government declines to make a recommendation. The recommendation of
8 the local unit of government, if any, shall be made and returned to
9 the department ~~at any time~~ within 45 days after the local unit of
10 government's receipt of the permit application.

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

17 Sec. 30311. (1) A permit for an activity listed in section
18 30304 shall not be approved unless the department determines that
19 the issuance of a permit is in the public interest, that the permit
20 is necessary to realize the benefits ~~derived~~ from the activity, and
21 that the activity is otherwise lawful.

22 (2) In determining whether the activity is in the public
23 interest, the benefit ~~which~~ **THAT** reasonably may be expected to
24 accrue from the proposal shall be balanced against the reasonably
25 foreseeable detriments of the activity. The decision shall reflect
26 the national and state concern for the protection of natural
27 resources from pollution, impairment, and destruction. The

1 following general criteria shall be considered:

2 (a) The relative extent of the public and private need for the
3 proposed activity.

4 (b) The availability of feasible and prudent alternative
5 locations and methods to ~~accomplish the expected~~ **REALIZE THE**
6 benefits from the activity.

7 (c) The extent and permanence of the beneficial or detrimental
8 effects that the proposed activity may have on the public and
9 private uses to which the area is suited, including the benefits
10 the wetland provides.

11 (d) The probable effects of each proposal in relation to the
12 cumulative effects created by other existing and anticipated
13 activities in the watershed.

14 (e) The probable effects on recognized historic, cultural,
15 scenic, ecological, or recreational values and on the public health
16 or fish or wildlife.

17 (f) The size of the wetland being considered.

18 (g) The amount of remaining wetland in the general area.

19 (h) Proximity to any waterway.

20 (i) Economic value, both public and private, of the proposed
21 land change to the general area.

22 (3) In considering a permit application, the department shall
23 give serious consideration to findings of necessity for the
24 proposed activity ~~which~~ **THAT** have been made by other state
25 agencies.

26 (4) A permit shall not be issued unless it is shown that an
27 unacceptable disruption will not result to the aquatic resources.

1 In determining whether a disruption to the aquatic resources is
2 unacceptable, the criteria set forth in section 30302 and
3 subsection (2) shall be considered. A permit shall not be issued
4 unless the applicant also shows either of the following:

5 (a) The proposed activity is primarily dependent upon being
6 located in the wetland.

7 (b) A feasible and prudent alternative does not exist.

8 (5) If it is otherwise a feasible and prudent alternative, a
9 property not presently owned by the applicant which could
10 reasonably be obtained, utilized, expanded, or managed in order to
11 fulfill the basic purpose of the proposed activity may be
12 considered. If all of the following requirements are met, there is
13 a rebuttable presumption that alternatives located on property not
14 presently owned by the applicant are not feasible and prudent:

15 (a) The activity is described in section 30304(a) or (b).

16 (b) The activity will **NOT** affect ~~not~~ more than 2 acres of
17 wetland.

18 (c) The activity is undertaken for the construction or
19 expansion of a single-family home and attendant features, the
20 construction or expansion of a barn or other farm building, or the
21 expansion of a small business facility.

22 (d) The activity is not covered by a general permit.

23 (6) Consideration of feasible and prudent alternatives
24 regarding the size of a proposed structure shall be based on the
25 footprint of the structure and not the square footage of the
26 structure.

27 (7) The choice of and extent of the proposed activity within a

1 proposed structure shall not be considered in determining feasible
2 and prudent alternatives.

3 (8) An alternative that entails higher costs, as described in
4 R 281.922a(11) of the Michigan ~~administrative code~~, **ADMINISTRATIVE**
5 **CODE**, is not feasible and prudent if those higher costs are
6 unreasonable. In determining whether such costs are unreasonable,
7 the department shall consider both of the following:

8 (a) The relation of the increased cost to the overall scope
9 and cost of the project.

10 (b) Whether the projected cost is substantially greater than
11 the costs normally associated with the particular type of project.

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, **AN**
16 **ADMINISTRATIVE WARRANT, ISSUED BY THE DIRECTOR OF THE DEPARTMENT,**
17 **OR THE CONSENT OF THE PERSON WHO OWNS OR CONTROLS THE PREMISES**, the
18 department may enter on, upon, or through the premises on which an
19 activity listed in section 30304 is located or on which information
20 required to be maintained under subsection (1) is located.

21 Sec. 30316. (1) The attorney general may commence a civil
22 action for appropriate relief, including injunctive relief upon
23 request of the department under section 30315(1). An action under
24 this subsection may be brought in the circuit court for the county
25 of Ingham or for a county in which the defendant is located,
26 resides, or is doing business. The court has jurisdiction to
27 restrain the violation and to require compliance with this part. In

1 addition to any other relief granted under this section, the court
2 may impose a civil fine of not more than \$10,000.00 per day of
3 violation. A person who violates an order of the court is subject
4 to a civil fine not to exceed \$10,000.00 for each day of violation.

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

7 (3) A person who willfully or recklessly violates a condition
8 or limitation in a permit issued by the department under this part,
9 or a corporate officer who has knowledge of or is responsible for a
10 violation, is guilty of a misdemeanor ~~punishable~~ by a fine of not
11 less than \$2,500.00 ~~per~~ **OR** more than \$25,000.00 per day of
12 violation ~~or~~ by imprisonment for not more than 1 year, or both. A
13 person who ~~violates~~ **COMMITTS A VIOLATION DESCRIBED IN** this section a
14 second or subsequent time is guilty of a felony ~~punishable~~ by a
15 fine of not more than \$50,000.00 for each day of violation ~~or~~ by
16 imprisonment for not more than 2 years, or both.

17 (4) In addition to the **CIVIL FINES AND** penalties provided
18 under subsections (1), (2), and (3), the court may order a person
19 who violates this part to restore as nearly as possible the wetland
20 that was affected by the violation to its original condition
21 immediately before the violation. The restoration may include the
22 removal of fill material deposited in the wetland or the
23 replacement of soil, sand, or minerals.

24 (5) **A CIVIL OR CRIMINAL FINE AUTHORIZED TO BE IMPOSED UNDER**
25 **THIS SECTION FOR EACH DAY OF VIOLATION SHALL NOT BE IMPOSED FOR A**
26 **DAY OF VIOLATION OCCURRING AFTER COMMENCEMENT OF BOTH THE**
27 **ENFORCEMENT ACTION AND NEGOTIATIONS BETWEEN THE DEPARTMENT OR THE**

1 ATTORNEY GENERAL OR OTHER PROSECUTING ATTORNEY AND THE VIOLATOR
2 OVER THE ENFORCEMENT ACTION.

3 (6) UNDER SECTION 2421C OF THE REVISED JUDICATURE ACT, 1961 PA
4 236, MCL 600.2421C, ON STIPULATION OF THE PARTIES OR MOTION, A
5 COURT THAT CONDUCTS A CIVIL ACTION UNDER THIS PART BROUGHT BY OR
6 AGAINST THIS STATE AS A PARTY SHALL AWARD TO A PREVAILING PARTY,
7 OTHER THAN THIS STATE, THE COSTS AND FEES INCURRED BY THAT PARTY IN
8 CONNECTION WITH THE CIVIL ACTION, UNLESS THIS STATE DEMONSTRATES BY
9 CLEAR AND CONVINCING EVIDENCE THAT THIS STATE'S POSITION WAS
10 SUBSTANTIALLY JUSTIFIABLE. HOWEVER, REGARDLESS OF WHETHER THE
11 STATE'S POSITION WAS SUBSTANTIALLY JUSTIFIABLE, EXPERT PROFESSIONAL
12 WITNESS FEES SHALL BE AWARDED TO A LANDOWNER THAT PREVAILS ON THE
13 ISSUE OF WHETHER THE LANDOWNER'S PROPERTY IS WETLAND.

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

16 (2) If a person is aggrieved by any action or inaction of the
17 department, the person may request a formal hearing on the matter
18 involved. The hearing shall be conducted by the department pursuant
19 to the administrative procedures act of 1969, ~~Act No. 306 of the~~
20 ~~Public Acts of 1969, being sections 1969 PA 306, MCL 24.201 to~~
21 ~~24.328. of the Michigan Compiled Laws.~~

22 (3) UNDER SECTION 123 OF THE ADMINISTRATIVE PROCEDURES ACT OF
23 1969, 1969 PA 306, MCL 24.323, ON STIPULATION OF THE PARTIES OR
24 MOTION, THE PRESIDING OFFICER WHO CONDUCTS A CONTESTED CASE UNDER
25 THIS PART SHALL AWARD TO A PREVAILING PARTY, OTHER THAN THE
26 DEPARTMENT, THE COSTS AND FEES INCURRED BY THE PARTY IN CONNECTION
27 WITH THE CONTESTED CASE, UNLESS THE DEPARTMENT DEMONSTRATES BY

1 CLEAR AND CONVINCING EVIDENCE THAT THE DEPARTMENT'S POSITION WAS
2 SUBSTANTIALLY JUSTIFIABLE. HOWEVER, REGARDLESS OF WHETHER THE
3 DEPARTMENT'S POSITION WAS SUBSTANTIALLY JUSTIFIABLE, EXPERT
4 PROFESSIONAL WITNESS FEES SHALL BE AWARDED TO A LANDOWNER THAT
5 PREVAILS ON THE ISSUE OF WHETHER THE LANDOWNER'S PROPERTY IS
6 WETLAND.

7 (4) ~~(3)~~—A determination, action, or inaction by the department
8 following the hearing is subject to judicial review as provided in
9 ~~Act No. 306 of the Public Acts of 1969.~~**THE ADMINISTRATIVE**
10 **PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.201 TO 24.328.**

11 (5) ~~(4)~~—This section does not limit the right of a wetland
12 owner to institute proceedings in any circuit of the circuit court
13 of the state against any person ~~when~~ **IF** necessary to protect the
14 wetland owner's rights.

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

19 ~~—(2) At least 2 hearings shall be held in each state planning~~
20 ~~and development region created by Executive Directive No. 1973-1.~~
21 ~~The hearing shall be held by the department after publication and~~
22 ~~due notice so that interested parties may comment on the inventory.~~
23 ~~After the hearings, the department shall issue a final inventory,~~
24 ~~which shall be sent to and kept by the agricultural extension~~
25 ~~office, register of deeds, and county clerk. Legislators shall~~
26 ~~receive an inventory of a county or regional classification for~~
27 ~~their districts including both preliminary and final inventories~~

1 ~~unless the legislators request not to receive the materials.~~

2 (2) ~~(3)~~—A person who owns or leases a parcel of property may
3 request that the department of environmental quality assess whether
4 the parcel of property or a portion of the parcel is wetland. The
5 request shall satisfy all of the following requirements:

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

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

8 (c) Contain a legal description of the parcel and, if only a
9 portion of the parcel is to be assessed, a description of the
10 portion to be assessed.

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

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

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

20 (a) Identify in detail the location of any wetland in the area
21 assessed.

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

24 (c) If the assessment report determines that the area assessed
25 or part of the area assessed is not wetland, state that the
26 department lacks jurisdiction under this part as to the area that
27 the report determines is not wetland and that this determination is

1 binding on the department for 3 years from the date of the
2 assessment.

3 (d) Contain the date of the assessment.

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

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

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

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

21 (ii) Part 91.

22 (iii) Part 301.

23 (iv) Part 323.

24 (v) Part 325.

25 (vi) Part 353.

26 (4) ~~(5)~~—A wetland is not contiguous to the Great Lakes or Lake
27 St. Clair, an inland lake, ~~or pond,~~ or a ~~river or~~ stream if the

1 department determines that there is no **CONTINUOUS SURFACE WATER**
2 **CONNECTION TO OR SIMILAR, NATURAL,** direct physical ~~contact and no~~
3 ~~surface water or interflowing groundwater connection to~~ **WITH** such a
4 body of water. A person may request that, as part of an assessment,
5 the department make a determination whether a wetland is ~~not~~
6 contiguous **TO THE GREAT LAKES, LAKE ST. CLAIR, AN INLAND LAKE, OR A**
7 **STREAM**. The department shall make the determination in writing
8 within 30 days after an on-site evaluation.

9 (5) ~~(6)~~—The department shall not consider an agricultural
10 drain, as defined in section 30305, in determining whether a
11 wetland is contiguous to the Great Lakes or Lake St. Clair, an
12 inland lake or pond, or a river or stream.

13 (6) ~~(7)~~—A drainage structure such as a culvert, ditch, or
14 channel, in and of itself, is not a wetland. A temporary
15 obstruction of drainage, in and of itself, is not a wetland until
16 the presence of water is of sufficient frequency and duration to be
17 identified as wetland pursuant to section 30301(2).

18 (7) ~~(8)~~—A person may request the department to reassess any
19 area assessed under subsections **(2) AND (3)** ~~and (4)~~ that the person
20 believes the department erroneously determined to be wetland. The
21 requirements of subsections **(2) AND (3)** ~~and (4)~~ apply to the
22 request, assessment, and assessment report. However, the request
23 shall be accompanied by evidence pertaining to wetland vegetation,
24 soils, or hydrology that is different from or in addition to the
25 information relied upon by the department. The assessment report
26 shall not contain the information required by subsection
27 ~~(4)(e)~~. **(3) (E)**.

1 (8) ~~(9)~~—If an assessment report determines that the area
2 assessed or part of the area assessed is not a wetland regulated by
3 the department under this part, then the area determined by the
4 assessment report not to be a wetland is not a wetland regulated by
5 the department under this part for a period of 3 years after the
6 date of the assessment.

7 (9) ~~(10)~~—The department may charge a fee for an assessment
8 requested under subsection ~~(3)~~ **(2)** based upon the cost to the
9 department of conducting an assessment.

10 (10) ~~(11)~~—There shall be no fee for an assessment under the
11 blueberry production assistance program.

12 (11) ~~(12)~~—The department shall, upon request of the applicant
13 and without charge, provide to the applicant a copy of any
14 delineation forms completed by the department associated with a
15 permit application.

16 Sec. 32301. As used in this part:

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

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

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

26 (d) "Land to be zoned or regulated" or "land to be zoned"
27 means the land in this state that borders or is adjacent to a Great

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

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

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

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

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