

HOUSE BILL No. 4508

March 7, 1991, Introduced by Reps. Van Singel, Alley, Middaugh, Gnodtke, Brown, Martin, Bennett, Strand and DeLange and referred to the Committee on Conservation, Recreation and Environment.

A bill to amend section 10 of Act No. 245 of the Public Acts of 1929, entitled as amended

"An act to regulate, protect, and conserve the water resources of the state, to provide for the control over the pollution of any waters of the state and the Great Lakes, to provide for the control over the alteration of the watercourses and the floodplains of all rivers and streams; to create a water resources commission; to prescribe the powers and duties of certain state agencies and officials; to require the registration of manufacturing products, production materials, and waste products where certain wastes are discharged; to require permits to regulate the discharge or storage of any substance which may affect the quality of the waters of the state and to establish restrictions to assure compliance with applicable state standards and to authorize the establishment of permit restrictions and programs to assure compliance with applicable federal law and regulations; to prohibit the pollution of any waters of the state and the Great Lakes; to prohibit the obstruction of the floodways of the rivers and streams of the state; to designate the department of natural resources as the state agency to cooperate and negotiate with other governments and agencies in matters concerning the water resources of the state; and to provide penalties and remedies for the violation of this act,"

as amended by Act No. 19 of the Public Acts of 1990, being section 323.10 of the Michigan Compiled Laws; and to add section 10a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 10 of Act No. 245 of the Public Acts of
2 1929, as amended by Act No. 19 of the Public Acts of 1990, being
3 section 323.10 of the Michigan Compiled Laws, is amended and sec-
4 tion 10a is added to read as follows:

5 Sec. 10. (1) The department or the commission may request
6 the attorney general to commence a civil action for appropriate
7 relief, including a permanent or temporary injunction, for a vio-
8 lation of this act or the provisions of a permit, order, rule, or
9 stipulation of the department or the commission. An action under
10 this subsection may be brought in the circuit court for the
11 county of Ingham or for the county in which the defendant is
12 located, resides, or is doing business. The court has jurisdic-
13 tion to restrain the violation and to require compliance. In
14 addition to any other relief granted under this subsection, the
15 court shall impose a civil fine of not less than \$2,500.00 and
16 may award reasonable attorney fees and costs to the prevailing
17 party. However, the maximum fine imposed by the court shall be
18 not more than \$25,000.00 per day of violation.

19 (2) A person who at the time of the violation, knew or
20 should have known that he or she discharged a substance contrary
21 to this act, or contrary to the provisions of a permit, order,
22 rule, or stipulation of the department or the commission, or who
23 intentionally makes a false statement, representation, or

1 certification in an application for, or form pertaining to a
2 permit, or in a notice or report required by the terms and condi-
3 tions of an issued permit, or who intentionally renders inaccu-
4 rate a monitoring device or record required to be maintained by
5 the commission, is guilty of a felony and shall be fined not less
6 than \$2,500.00 or more than \$25,000.00 for each violation. The
7 court may impose an additional fine of not more than \$25,000.00
8 for each day during which the unlawful discharge occurred. If
9 the conviction is for a violation committed after a first convic-
10 tion of the person under this subsection, the court shall impose
11 a fine of not less than \$25,000.00 per day and not more than
12 \$50,000.00 per day of violation. Upon conviction, in addition to
13 a fine, the court in its discretion may sentence the defendant to
14 imprisonment for not more than 2 years or impose probation upon a
15 person for a violation of this act. With the exception of the
16 issuance of criminal complaints, issuance of warrants, and the
17 holding of an arraignment, the circuit court for the county in
18 which the violation occurred has exclusive jurisdiction.
19 However, the person shall not be subject to the penalties of this
20 subsection if the discharge of the effluent is in conformance
21 with and obedient to a rule, order, or permit of the commission.
22 In addition to a fine, the attorney general may file a civil suit
23 in a court of competent jurisdiction to recover the full value of
24 the injuries done to the natural resources of the state and the
25 costs of surveillance and enforcement by the state resulting from
26 the violation.

1 (3) Upon a finding by the court that the actions of a civil
2 defendant pose or posed a substantial endangerment to public
3 health, safety, or welfare, the court shall impose, in addition
4 to the penalties set forth in subsection (1), a fine of not less
5 than \$500,000.00 and not more than \$5,000,000.00.

6 (4) Upon a finding by the court that the action of a crimi-
7 nal defendant pose or posed a substantial endangerment to public
8 health, safety, or welfare, the court shall impose, in addition
9 to the penalties set forth in subsection (2), a fine of not less
10 than \$1,000,000.00 and, in addition to a fine, a sentence of
11 5 years' imprisonment.

12 (5) To find a defendant civilly or criminally liable for
13 substantial endangerment under subsections (3) and (4), the court
14 shall determine that the defendant knowingly or recklessly acted
15 in such a manner as to cause a danger of death or serious bodily
16 injury and that either of the following has occurred:

17 (a) The defendant had an actual awareness, or belief, or
18 understanding, that his or her conduct would cause a substantial
19 danger of death or serious bodily injury.

20 (b) The defendant acted in gross disregard of the standard
21 of care which any reasonable person should observe in similar
22 circumstances.

23 (6) Knowledge possessed by a person other than the defendant
24 under subsection (5) may be attributable to the defendant if the
25 defendant took affirmative steps to shield himself or herself
26 from the relevant information.

1 (7) Any fine or other award ordered paid pursuant to this
2 section shall do both of the following:

3 (a) Be payable to the state of Michigan and, EXCEPT AS OTH-
4 ERWISE PROVIDED IN SECTION 10A, credited to the general fund.

5 (b) Constitute a lien on any property, of any nature or
6 kind, owned by the defendant.

7 (8) A lien under subsection (7)(b) shall take effect and
8 have priority over all other liens and encumbrances except those
9 filed or recorded prior to the date of judgment only if notice of
10 the lien is filed or recorded as required by state or federal
11 law.

12 (9) A lien filed or recorded pursuant to subsection (8)
13 shall be terminated according to the procedures required by state
14 or federal law within 14 days after the fine or other award
15 ordered to be paid is paid.

16 (10) A STATE DEPARTMENT OR STATE AGENCY THAT ENDANGERS THE
17 PUBLIC HEALTH IN A NEGLIGENT MANNER BY DISCHARGING INTO THE
18 WATERS OF THIS STATE IN VIOLATION OF THIS ACT OR BY EXCEEDING THE
19 TERMS OF A DISCHARGE PERMIT SHALL BE RESPONSIBLE FOR FINES IN AN
20 AMOUNT 3 TIMES THE AMOUNT OF THE FINE THAT WOULD HAVE BEEN
21 IMPOSED IN A CIVIL ACTION UNDER SUBSECTION (1) OR (3).

22 (11) ~~-(10)-~~ In addition to any other method of collection,
23 any fine or other award ordered paid may be recovered by right of
24 setoff to any debt owed to the defendant by the state of
25 Michigan, including the right to a refund of income taxes paid.

26 SEC. 10A. (1) IF A STATE DEPARTMENT OR STATE AGENCY
27 DISCHARGES INTO THE WATERS OF THIS STATE IN VIOLATION OF THIS

1 ACT, OR EXCEEDS THE TERMS OF A DISCHARGE PERMIT ISSUED UNDER THIS
2 ACT, ANY MONETARY CIVIL FINE IMPOSED UNDER THIS ACT BY WHATEVER
3 MEANS SHALL BE FORWARDED TO THE COMMUNITY REIMBURSEMENT FUND CRE-
4 ATED IN SUBSECTION (2). A STATE DEPARTMENT OR AGENCY THAT
5 RECEIVES SUCH A CIVIL FINE SHALL IMMEDIATELY NOTIFY THE DEPART-
6 MENT OF MANAGEMENT AND BUDGET OF ALL OF THE FOLLOWING:

7 (A) THE IMPOSITION OF THE FINE.

8 (B) THE UNDERLYING FACTS REGARDING THE DISCHARGE THAT WAS
9 THE SUBJECT OF THE FINE.

10 (C) A DESCRIPTION OF THE LIKELY IMPACT OF THE VIOLATION.

11 (D) ANY OTHER INFORMATION REQUESTED BY THE DEPARTMENT OF
12 MANAGEMENT AND BUDGET.

13 (2) THE COMMUNITY REIMBURSEMENT FUND IS CREATED IN THE
14 DEPARTMENT OF TREASURY. THE FUND SHALL BE ADMINISTERED BY THE
15 DEPARTMENT OF MANAGEMENT AND BUDGET. THE STATE TREASURER SHALL
16 DIRECT THE INVESTMENT OF THE FUND. INTEREST AND EARNINGS FROM
17 FUND INVESTMENTS SHALL BE CREDITED TO THE FUND. MONEY IN THE
18 FUND AT THE CLOSE OF THE FISCAL YEAR SHALL REMAIN IN THE FUND AND
19 SHALL NOT REVERT TO THE GENERAL FUND.

20 (3) MONEY IN THE COMMUNITY REIMBURSEMENT FUND SHALL BE USED
21 ONLY TO ISSUE GRANTS TO MUNICIPALITIES AND OTHER PERSONS WHO ARE
22 DIRECTLY AND ADVERSELY IMPACTED BY A DISCHARGE DESCRIBED IN SUB-
23 SECTION (1). A COMMUNITY REIMBURSEMENT GRANT SHALL BE UTILIZED
24 TO UNDERTAKE RESPONSE ACTIVITY OR TO REIMBURSE A PERSON FOR
25 UNDERTAKING RESPONSE ACTIVITY TO MITIGATE THE IMPACT OF AN UNLAW-
26 FUL DISCHARGE. IF THE PERSON WHO RECEIVES THE GRANT IS A
27 MUNICIPALITY, A GRANT MAY ALSO BE USED TO IMPROVE THE QUALITY OF

1 LIFE WITHIN THE MUNICIPALITY THAT WAS ADVERSELY IMPACTED BY AN
2 UNLAWFUL DISCHARGE.

3 (4) FOLLOWING THE IMPOSITION OF A FINE DESCRIBED IN SUBSEC-
4 TION (1) AND FOLLOWING RECEIPT OF THE REQUIRED INFORMATION FROM
5 THE VIOLATING STATE DEPARTMENT OR AGENCY, THE DEPARTMENT OF MAN-
6 AGEMENT AND BUDGET SHALL DO ALL OF THE FOLLOWING:

7 (A) IMMEDIATELY NOTIFY BY FIRST-CLASS MAIL EACH IDENTIFIABLE
8 PERSON DIRECTLY IMPACTED BY THE DISCHARGE AND EACH COUNTY, CITY,
9 VILLAGE, OR TOWNSHIP IMPACTED BY THE DISCHARGE THAT IT WILL
10 ACCEPT NOTICE OF INTENT TO FILE AN APPLICATION FOR A GRANT FROM
11 THE COMMUNITY REIMBURSEMENT FUND FOR NOT MORE THAN 60 DAYS FOL-
12 LOWING IMPOSITION OF THE FINE.

13 (B) IMMEDIATELY NOTIFY BY PUBLICATION IN A NEWSPAPER OF GEN-
14 ERAL CIRCULATION IN EACH MUNICIPALITY IMPACTED BY THE UNLAWFUL
15 DISCHARGE THAT IT WILL ACCEPT NOTICE OF INTENT TO FILE AN APPLI-
16 CATION FOR A GRANT FROM THE COMMUNITY REIMBURSEMENT FUND FOR NOT
17 MORE THAN 60 DAYS FOLLOWING IMPOSITION OF THE FINE.

18 (C) NOTIFY EACH PERSON WHO SUBMITS A TIMELY NOTICE OF INTENT
19 TO FILE AN APPLICATION FOR A GRANT OF THE FINAL DATE ON WHICH
20 GRANT APPLICATIONS WILL BE ACCEPTED. THIS FINAL DATE SHALL BE
21 DETERMINED BY THE DEPARTMENT OF MANAGEMENT AND BUDGET BASED UPON
22 THE NATURE OF THE DISCHARGE AND THE SPEED AT WHICH IT IS REASON-
23 ABLE FOR AN IMPACTED PERSON TO ASSESS THE ADVERSE IMPACT OF THE
24 DISCHARGE.

25 (D) REVIEW EACH ELIGIBLE COMMUNITY REIMBURSEMENT GRANT
26 APPLICATION AND ISSUE GRANTS TO THOSE APPLICANTS WHO THE
27 DEPARTMENT OF MANAGEMENT AND BUDGET DETERMINES HAVE BEEN DIRECTLY

1 AND ADVERSELY IMPACTED BY A DISCHARGE DESCRIBED IN SUBSECTION
2 (1).

3 (E) IF ELIGIBLE GRANT APPLICATION REQUESTS EXCEED THE AMOUNT
4 AVAILABLE IN THE FUND, ISSUE GRANTS TO ELIGIBLE APPLICANTS ON A
5 PRO RATA BASIS.

6 (F) PROMULGATE RULES AS NECESSARY TO IMPLEMENT THIS ACT.

7 (5) TRIPLE FINES ASSESSED UNDER SECTION 10(10) SHALL BE FOR-
8 WARDED TO THE COMMUNITY REIMBURSEMENT FUND. ONE THIRD OF EACH
9 ASSESSED TRIPLE FINE SHALL BE RESERVED FOR GRANT APPLICANTS THAT
10 ARE IMPACTED MUNICIPALITIES. THE REMAINING 2/3 SHALL BE UTILIZED
11 FOR GRANTS TO OTHER ELIGIBLE PERSONS, INCLUDING MUNICIPALITIES.

12 (6) THIS SECTION SHALL NOT BE CONSTRUED TO RESTRICT OR LIMIT
13 THE STATE DEPARTMENT OR AGENCY THAT WAS RESPONSIBLE FOR A DIS-
14 CHARGE FROM RESPONSIBILITY FOR OTHER RESPONSE ACTIVITY.

15 (7) AS USED IN THIS SECTION, "RESPONSE ACTIVITY" HAS THE
16 MEANING ATTRIBUTED TO THE TERM IN THE ENVIRONMENTAL RESPONSE ACT,
17 ACT NO. 307 OF THE PUBLIC ACTS OF 1982, BEING SECTIONS 299.601 TO
18 299.618 OF THE MICHIGAN COMPILED LAWS.