

Act No. 247
Public Acts of 1993
Approved by the Governor
November 19, 1993
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**STATE OF MICHIGAN
87TH LEGISLATURE
REGULAR SESSION OF 1993**

Introduced by Senator McManus

ENROLLED SENATE BILL No. 74

AN ACT to provide for the protection of groundwater from contamination by pesticides and fertilizers; to prescribe the powers and duties of certain state agencies and officials; and to repeal certain parts of the act on a specific date.

The People of the State of Michigan enact:

Sec. 1. This act shall be known and may be cited as the "groundwater and freshwater protection act".

Sec. 1a. The intent of this act is to reduce risks to the environment and public health by preventing groundwater contamination from pesticides and fertilizers.

Sec. 2. The words and phrases defined in sections 3 to 6 have the meanings ascribed to them in those sections.

Sec. 3. (1) "Activity plan" means a plan for the mitigation of groundwater contamination at a specific location, including a time frame for implementation.

(2) "Agronomic rate" means either of the following:

(a) For pesticides, the application of pesticide contaminated materials in such a manner as not to exceed legal labeled rates.

(b) For fertilizers, the application of fertilizer contaminated materials at rates not to exceed those recommended by the Michigan state university cooperative extension service taking all available sources of nutrients into account.

(3) "Analyte" or "analytes" means the material or materials an analysis is designed to detect either qualitatively or quantitatively.

(4) "Confirmation mechanism" means a scientific process for the verification of detections of analytes in groundwater utilizing at least 2 separate water samples collected at time intervals of greater than 14 days from the same groundwater sampling point and analyzed by peer reviewed and authenticated laboratory methodologies.

(5) "Contaminant" means any pesticide or fertilizer originated chemical, radionuclide, ion, synthetic organic compound, microorganism or waste that does not occur naturally in groundwater or that naturally occurs at a lower concentration than detected.

(6) "Contamination" means the direct or indirect introduction into groundwater of any contaminant caused in whole or in part by human activity.

(7) "Demonstration project" means a project designed to illustrate the implementation and impact of alternate pesticide and fertilizer management practices.

(8) "Department" means the department of agriculture.

(9) "Director" means the director of the department or his or her designee.

Sec. 4. (1) "Envelope monitoring" means monitoring of groundwater in areas adjacent to properties where groundwater is contaminated to determine the concentration and spatial distribution of the contaminant in the aquifer.

(2) "Fertilizer" means a fertilizer as defined in the fertilizer act of 1975.

(3) "Fertilizer act of 1975" means the fertilizer act of 1975, Act No. 198 of the Public Acts of 1975, being sections 286.751 to 286.767 of the Michigan Compiled Laws.

(4) "Fund" means the freshwater protection fund created in section 16.

(5) "General screening" means monitoring of groundwater for the purpose of determining the presence and concentration of analytes.

(6) "Groundwater" means underground water within the zone of saturation.

(7) "Groundwater advisory council" means the groundwater advisory council established in section 8.

(8) "Groundwater impact potential" means the potential for contamination of groundwater as a result of pesticide or nitrogen fertilizer use.

(9) "Groundwater protection rule" means a groundwater protection rule promulgated under the pesticide control act, or the fertilizer act of 1975, or both.

(10) "Groundwater resource protection level" means a maximum contaminant level, health advisory level, or, if the United States environmental protection agency has not established a maximum contaminant level or a health advisory level, a level established by the director of public health using risk assessment protocol established by rule under this act.

(11) "Groundwater resource response level" means 20% of the groundwater resource protection level. In cases where 20% of the groundwater resource protection level is less than the method detection limit, the method detection limit shall serve as the groundwater resource response level.

(12) "Groundwater stewardship practices" means any of a set of voluntary practices adopted by the commission of agriculture pursuant to section 7 and designed to protect groundwater from contamination by pesticides and fertilizers.

(13) "Maximum contaminant level" means that term as it is defined in title XIV of the public health service act, chapter 373, 88 Stat. 1660, and regulations promulgated under that act.

(14) "Method detection limit" means the minimum concentration of a substance that can be measured and reported with 99% confidence that the analyte concentration is greater than 0 and is determined from analysis of a sample in a given matrix that contains the analyte.

(15) "Monitoring" means sampling and analysis to determine the levels of pesticides or their breakdown products; fertilizers or their residues; or other analytes as determined by the director.

Sec. 5. (1) "Nitrogen fertilizer" means a fertilizer that contains nitrogen as a component.

(2) "On-site evaluation system" means a specific set of criteria used to voluntarily evaluate a person's property with regard to determination of potential sources of contamination.

(3) "Person" means an individual, partnership, corporation, association, governmental entity, or other legal entity.

(4) "Pesticide" means that term as it is defined in the pesticide control act.

(5) "Pesticide control act" means the pesticide control act, Act No. 171 of the Public Acts of 1976, being sections 286.551 to 286.581 of the Michigan Compiled Laws.

Sec. 6. (1) "Registrant" means a person who is subject to the registration requirements of the pesticide control act.

(2) "Restricted use pesticide" means that term as it is defined in the pesticide control act.

(3) "Rule" means a rule promulgated pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(4) "Specialty pesticide" means a disinfectant, sanitizer, germicide, biocide, or other pesticide labeled solely for use directly on humans or pets, or other pesticides labeled solely for use in areas associated with the household or home life including garden and ornamental uses or on institutional or industrial premises, but excludes pesticides labeled for use on rights of way, or other outdoor wide-area treatments.

(5) "State management plan" means a plan for the protection of groundwater as required by the United States environmental protection agency's labeling requirements for pesticides and devices pursuant to 40 C.F.R. part 156.

(6) "Stewardship plan" means a set of practices, activities, or procedures developed and implemented pursuant to this act to provide operations that are in accord with groundwater stewardship practices.

(7) "Technical assistance" means direct on-site assistance provided to individuals designed to improve implementation of groundwater stewardship practices or groundwater protection rules.

(8) "Use" means the loading, mixing, applying, storing, transporting, or disposing of a pesticide or fertilizer.

Sec. 7. (1) The director, in conjunction with the Michigan state university cooperative extension service and the agricultural experiment station in cooperation with the United States department of agriculture soil and conservation service and the agricultural stabilization and conservation service, the department of natural resources, and other professional and industry organizations shall develop groundwater stewardship practices for approval by the commission of agriculture and upon approval shall promote their implementation.

(2) The director, in conjunction with Michigan state university, the department of natural resources, and other persons the director considers appropriate, shall develop a voluntary on-site evaluation system for pesticide or nitrogen fertilizer use. The on-site evaluation system shall be designed to do all of the following:

(a) Provide persons with the ability to voluntarily determine the relative groundwater impact potential posed by their use of pesticides and nitrogen fertilizers.

(b) Provide persons with the ability to determine the degree to which operations are in accord with groundwater stewardship practices and applicable groundwater protection rules.

(c) Prioritize operational changes at the site level intended to protect groundwater.

(d) Guide persons to appropriate technical and educational materials.

(3) The director, in conjunction with the groundwater advisory council, shall review and evaluate the effectiveness of groundwater stewardship practices adopted under subsection (1).

Sec. 8. (1) The director shall establish a groundwater advisory council composed of all of the following:

(a) The director of the department of agriculture.

(b) The director of the department of natural resources.

(c) The director of public health.

(d) The director of the Michigan state university cooperative extension service.

(e) The director of the Michigan state university agricultural experimentation station.

(f) Representatives of all of the following as appointed by the director:

(i) The United States department of agriculture stabilization and conservation service.

(ii) The United States department of agriculture soil conservation service.

(iii) The United States geological survey.

(iv) Soil and water conservation districts.

(v) Agricultural producers.

(vi) Nongovernmental environmental organizations.

(vii) Regulated agricultural industries.

(viii) Right-of-way applicators.

(ix) Other persons as determined by the director.

(2) The groundwater advisory council shall advise the director on, but not limited to, the following:

(a) Groundwater stewardship practices.

(b) On-site evaluation system.

(c) Groundwater protection rules established under the pesticide control act.

(d) Water quality and environmental monitoring.

(e) Stewardship program activities.

(f) Interagency coordination of groundwater programs.

(g) Prioritizing the activities of the groundwater stewardship teams based on detections of pesticides in groundwater, nitrogen concentrations in groundwater, groundwater impact potential estimation, or other factors as determined by the director.

Sec. 9. (1) The director shall establish regional groundwater stewardship teams composed of departmental, educational, technical assistance personnel, and other persons as determined necessary by the director, for implementation of programs developed under this act.

(2) The groundwater stewardship teams are responsible for implementation of programs developed under this act, including, but not limited to, the provision of all of the following:

(a) Educational opportunities including direct educational assistance and consulting programs; demonstration projects; educational programs; tours, workshops, and conferences.

(b) Technical assistance for persons making changes consistent with groundwater stewardship practices or groundwater protection rules, on-site evaluation of practices that may impact groundwater, the development and implementation of stewardship plans, and the development and implementation of activity plans.

(c) Private well sampling, grants-in-aid for persons in the stewardship program, emergency response, and land application of pesticide and fertilizer contaminated materials.

Sec. 10. (1) The director, in consultation with the groundwater advisory council, shall establish a groundwater stewardship program designed to promote the protection of groundwater through education, technical assistance, and grants. A person who has completed an on-site evaluation with technical assistance personnel is eligible to participate in the groundwater stewardship program. Participants in the groundwater stewardship program shall develop and implement a stewardship plan approved by the director.

(2) The department may provide grants to persons participating in the groundwater stewardship program in accordance with procedures established by the department. Grants shall be available for making changes consistent with groundwater stewardship practices, groundwater protection rules, and the removal of potential sources of contamination and other purposes considered suitable by the director.

(3) Liability for groundwater contamination shall not be imposed on a person in the groundwater stewardship program under this act unless he or she was grossly negligent, or in violation of state or federal law or failed to comply with the provisions of the applicable groundwater stewardship program or plan. Nothing in this act shall modify or limit any obligation, responsibility, or liability imposed by any other provision of state law.

(4) Technical assistance programs and grants provided under this section are limited to availability of funds collected pursuant to this act.

Sec. 11. (1) Pesticides containing ingredients that have been confirmed in groundwater at a level above their groundwater resource response level or pesticides for which a state management plan is required shall be registered as restricted use pesticides pursuant to the pesticide control act. The director, by rule promulgated pursuant to the pesticide control act, shall establish criteria for designating a pesticide a restricted use pesticide due to groundwater concerns.

(2) The director of the department of public health shall establish groundwater resource protection levels and promulgate groundwater resource protection levels for all pesticides that do not have a federally established maximum contaminant level or a health advisory level and for which monitoring occurs.

Sec. 12. (1) The director shall establish and implement a program to track restricted use pesticides to their county of application.

(2) The director may require additional information for more refined tracking in specific areas determined through groundwater impact potential estimation to be highly vulnerable to groundwater contamination for those pesticides in which the United States environmental protection agency has required a state management plan.

(3) Information collected in subsection (2) shall be considered confidential business information and not subject to the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

Sec. 13. (1) The director, in conjunction with the department of natural resources and the department of public health, shall develop and establish priorities, procedures, and protocols for the implementation of a groundwater monitoring program to do all of the following:

(a) Provide general screening of groundwater.

(b) Determine the relative risk of groundwater contamination at different locations.

(c) Perform envelope monitoring.

(2) The director shall notify affected well owners of their monitoring results of the monitoring conducted pursuant to this section, in a timely manner, including, the method detection limits and associated water resource protection levels.

(3) The monitoring program conducted pursuant to this section may provide for modifications of sampling density and analytes to reflect regional groundwater impact potential.

(4) The monitoring conducted pursuant to this section shall be conducted utilizing generally accepted scientific practices.

(5) The department shall establish a method detection limit goal for monitoring conducted pursuant to this section set at 10% of a compound's groundwater resource response level.

(6) Agencies conducting monitoring for pesticides or fertilizers pursuant to this section shall notify the director on forms provided by or a format approved by the director of the location, procedure, and concentration of all pesticide

detections or nitrate concentrations in excess of 10 parts per million. Information received by the director shall be evaluated based upon accepted protocols and procedures established under this act.

(7) The director shall establish by rule laboratory confirmation mechanisms used under this act.

(8) The director shall establish by rule risk assessment protocols for the development of groundwater resource protection levels.

Sec. 14. (1) Upon confirmation of an adverse impact on groundwater, the director may, upon reasonable notice, require a person to furnish any information that the person may have relating to the identification, nature, and quantity of pesticides and fertilizers that are or have been used on a particular site and current or past production practices that may have impacted groundwater quality. This information shall be treated as confidential business information and not subject to the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

(2) The director may, upon written request, authorize persons to land-apply materials contaminated with pesticides or fertilizers at agronomic rates. This authorization shall prescribe appropriate operational control activities to protect the application location and shall identify both the location of remediation and the location or locations where such a land application will take place.

Sec. 15. (1) In addition to the fees provided for in the pesticide control act, a registrant shall pay an annual groundwater protection fee for each product to be registered. The specialty pesticide groundwater protection fee is \$100.00 per product. Groundwater protection fees for all other pesticides are 0.75% of the wholesale value of the previous registration years' product sales for use in this state with a \$150.00 minimum groundwater protection fee. The minimum groundwater protection fee is due in the office of the director before July 1. Sales based groundwater protection fees greater than the \$150.00 minimum are due in the office of the director before October 1 of the following registration years.

(2) An additional late fee of \$100.00 shall be paid by the registrant for each pesticide if the pesticide registration is a renewal registration and the minimum groundwater protection fee is received by the department after June 30.

(3) A person required to pay a specialty fertilizer or soil conditioner registration fee under the fertilizer act of 1975, Act No. 198 of the Public Acts of 1975, being sections 286.751 to 286.767 of the Michigan Compiled Laws, shall pay an additional \$100.00 groundwater protection fee for each brand and product name of each grade registered.

(4) All fertilizer manufacturers or distributors licensed under the fertilizer act of 1975, except specialty fertilizer and soil conditioner registrants, shall pay an additional groundwater protection fee of 1-1/2 cents per percent of nitrogen in the fertilizer for each ton of fertilizer sold.

(5) The fees collected under this act, including any interest or dividends earned, shall be transmitted to the state treasurer, who shall credit the money received to the fund.

(6) This section is repealed upon the expiration of 7 years after its effective date.

(7) Upon the expenditure or appropriation of funds raised in this section for any other purpose than those specifically listed in this act, authorization to collect fees in this section shall be suspended until such time as the funds expended or appropriated for purposes other than those listed in this act are returned to the freshwater protection fund.

Sec. 16. (1) The freshwater protection fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the fund, including, general fund general purpose appropriations, gifts, grants, or bequests, and if provided by law, revenue from the sale of Michigan freshwater protection bonds or the Michigan freshwater protection checkoff on state income and single business tax returns. The director shall annually seek matching general fund general purpose appropriations in amounts equal to the groundwater protection fees deposited into the fund pursuant to this act. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(3) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(4) The department shall expend money from the fund, upon appropriation, only for 1 or more of the following purposes:

(a) Direct assistance.

(b) Indirect assistance.

(c) Emergency response and removal of potential sources of groundwater contamination. Expenditures pursuant to this subdivision shall not exceed \$15,000.00 per location.

(d) Administrative costs. Expenditures pursuant to this subdivision shall not exceed 20% of the annual appropriations from the fund.

(5) The department shall establish criteria and procedures for approving proposed expenditures from the fund.

(6) Notwithstanding section 15, if at the close of any fiscal year the amount of money in the fund exceeds \$3,500,000.00, the department shall not collect a groundwater protection fee for the following year. After the groundwater protection fees have been suspended under this subsection, the fees shall only be reinstated if, at the close of any succeeding fiscal year, the amount of money in the fund is less than \$1,000,000.00.

(7) The department of treasury shall, before November 1 of each year, notify the department of the balance in the fund at the close of the preceding fiscal year.

(8) As used in this section:

(a) "Direct assistance" includes, but is not limited to, programs that will provide for any of the following:

(i) Provision of alternate noncommunity water supplies.

(ii) Closure of wells that may impact groundwater, such as abandoned, improperly constructed, or drainage wells.

(iii) The environmentally sound disposal or recycling of specialty pesticide containers.

(iv) The environmentally sound disposal or recycling of nonspecialty pesticide containers.

(v) Specialty and nonspecialty pesticide pickup programs for pesticides not currently registered for use.

(vi) Programs devoted to integrated pest and crop management that strive to encourage the judicious use of pesticides and fertilizers through targeted applications as part of a systems approach to pest control and related crop management decisions.

(vii) Incentive and cost share programs for persons in the groundwater stewardship program for implementation of groundwater stewardship practices or groundwater protection rules.

(viii) Incentive and cost share programs for persons who notify the director of potential sources of groundwater contamination on their property.

(ix) Monitoring of private well water for pesticides and fertilizers.

(x) Removal of soils and waters contaminated by pesticides and fertilizers and the land application of those materials at agronomic rates.

(xi) Groundwater stewardship program grants pursuant to section 10.

(xii) Other programs established pursuant to this act.

(b) "Indirect assistance" includes, but is not limited to, programs which will provide for any of the following:

(i) Public education and demonstration programs on specialty pesticide container recycling and environmentally sound disposal methods.

(ii) Educational programs for pesticide and fertilizer end users.

(iii) Technical assistance programs for pesticide and fertilizer end users.

(iv) The promotion and implementation of on-site evaluation systems and groundwater stewardship practices.

(v) Research programs for determination of the impacts of alternate pesticide and fertilizer management practices.

(vi) Research program for determination of aquifer sensitivity and vulnerability to contamination by pesticides and fertilizers.

(c) "Administrative costs" include, but are not limited to, costs incurred during any of the following:

(i) Groundwater monitoring for pesticides and fertilizers.

(ii) Development and enforcement of groundwater protection rules.

(iii) Coordination of programs under this act with the United States environmental protection agency and other state programs with groundwater and pesticide management responsibilities.

(iv) Management of pesticide sales information.

Sec. 17. The department may promulgate rules as it considers necessary or advisable to implement this act.

Sec. 18. This act shall not take effect unless Senate Bill No. 675 of the 87th Legislature is enacted into law.

This act is ordered to take immediate effect.

Secretary of the Senate.

Co-Clerk of the House of Representatives.

Approved -----

Governor.