

HOUSE BILL No. 5902

June 2, 1998, Introduced by Reps. Kilpatrick, Emerson, Kelly, Vaughn, Murphy, Scott, Freeman, LaForge, Rison, Brater, Hale, Stallworth, Parks and Thomas and referred to the Committee on Conservation, Environment and Recreation.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," (MCL 324.101 to 324.90106) by amending the part heading to part 13 and by adding sections 1301, 1302, 1303, 1304, 1305, 1306, and 1307.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 PART 13 PERMITS AND ENVIRONMENTAL JUSTICE
2 SEC. 1301. AS USED IN THIS PART:
3 (A) "AFFECTED COMMUNITY" MEANS THAT GROUP OF PEOPLE LIVING
4 WITHIN AN AREA SURROUNDING EITHER A PROPOSED NEW POLLUTION
5 SOURCE, OR A PROPOSED MODIFICATION TO AN EXISTING POLLUTION
6 SOURCE, WHO WOULD BE EXPOSED TO POLLUTION.
7 (B) "DEPARTMENT" MEANS THE DIRECTOR OF THE DEPARTMENT OF
8 ENVIRONMENTAL QUALITY OR HIS OR HER DESIGNEE.

1 (C) "DISPROPORTIONATE ENVIRONMENTAL EFFECTS" MEANS ADVERSE
2 EFFECTS ON THE ENVIRONMENT OF A LOW-INCOME OR MINORITY COMMUNITY
3 THAT SIGNIFICANTLY EXCEED OR THREATEN TO EXCEED THE ADVERSE
4 EFFECTS FOUND IN THE GENERAL ENVIRONMENT. THE ADVERSE EFFECTS
5 MAY INCLUDE ECOLOGICAL EFFECTS, SUCH AS THE EFFECTS ON NATURAL
6 RESOURCES AND ON THE COMPONENTS, STRUCTURES, AND FUNCTIONING OF
7 AFFECTED ECOSYSTEMS, AND AESTHETIC, HISTORIC, CULTURAL, ECONOMIC,
8 OR SOCIAL IMPACTS.

9 (D) "DISPROPORTIONATE HUMAN HEALTH EFFECTS" MEANS ADVERSE
10 EFFECTS ON THE HEALTH OF A LOW-INCOME OR MINORITY COMMUNITY THAT
11 EXCEED OR THREATEN TO EXCEED THE ADVERSE EFFECTS ON HUMAN HEALTH
12 FOUND IN THE SURROUNDING AREA OR REGION.

13 (E) "EMISSIONS" INCLUDES EMISSIONS AND DISCHARGES FROM POINT
14 AND NONPOINT POLLUTION SOURCES, WHETHER PERMITTED OR
15 NONPERMITTED.

16 (F) "ENVIRONMENT" MEANS THE COMBINATION OF PHYSICAL, SOCIAL,
17 AND CULTURAL CONDITIONS, NATURAL OR HUMAN-MADE, THAT AFFECT AND
18 INFLUENCE GROWTH, DEVELOPMENT, AND SURVIVAL, INCLUDING BUT NOT
19 LIMITED TO COMMUNITIES AND LOCATIONS WITHIN COMMUNITIES WHERE
20 PEOPLE LIVE, WORK, AND PLAY.

21 (G) "ENVIRONMENTAL JUSTICE" MEANS THE FAIR TREATMENT AND
22 MEANINGFUL INVOLVEMENT OF ALL PEOPLE REGARDLESS OF RACE, COLOR,
23 NATIONAL ORIGIN, OR INCOME, WITH RESPECT TO THE DEVELOPMENT,
24 IMPLEMENTATION, AND ENFORCEMENT OF ENVIRONMENTAL LAWS, RULES, AND
25 POLICIES. FAIR TREATMENT MEANS THAT NO GROUP OF PEOPLE, INCLUD-
26 ING RACIAL, ETHNIC, OR SOCIOECONOMIC GROUPS, SHOULD BEAR A
27 DISPROPORTIONATE SHARE OF THE ADVERSE IMPACTS RESULTING FROM

1 INDUSTRIAL, MUNICIPAL, OR COMMERCIAL OPERATIONS OR THE EXECUTION
2 OF FEDERAL, STATE, LOCAL, OR TRIBAL PROGRAMS AND POLICIES.

3 (H) "GENERAL PUBLIC CONCERN OR CONTROVERSY" MEANS THE PUBLIC
4 EXPRESSION OF DISSATISFACTION OR DISCONTENT WITH A PROPOSED
5 ACTION.

6 (I) "HOST COMMUNITY" MEANS THE LOCAL UNIT OF GOVERNMENT POS-
7 SESSING ZONING AUTHORITY WITHIN AN AREA SURROUNDING EITHER A PRO-
8 POSED NEW POLLUTION SOURCE, OR A PROPOSED MODIFICATION TO AN
9 EXISTING POLLUTION SOURCE.

10 (J) "IMPACT" MEANS ANY IDENTIFIABLE CHANGE IN SOME ELEMENT
11 OF THE ENVIRONMENT, INCLUDING, BUT NOT LIMITED TO, AIR OR WATER
12 POLLUTION, THREATS TO HUMAN HEALTH, OR OTHER ADVERSE EFFECTS ON
13 HUMAN LIFE.

14 (K) "LOCAL HEALTH DEPARTMENT" MEANS THAT TERM AS DEFINED IN
15 SECTION 1105 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL
16 333.1105.

17 (L) "LOCAL UNIT OF GOVERNMENT" MEANS A CITY, VILLAGE, OR
18 TOWNSHIP.

19 (M) "MINORITY COMMUNITY" INCLUDES THOSE INDIVIDUALS WHO ARE
20 MEMBERS OF A GROUP RECOGNIZED BY THE FEDERAL OR STATE GOVERNMENT,
21 INCLUDING BUT NOT LIMITED TO NATIVE AMERICAN AND INDIGENOUS,
22 ARAB-AMERICAN, ASIAN OR PACIFIC ISLANDER, AFRICAN-AMERICAN, OR
23 HISPANIC, WHOSE POPULATION WITHIN AN AFFECTED COMMUNITY IS DIS-
24 PROPORTIONATELY LARGER THAN THE POPULATION OF THAT GROUP WITHIN
25 THE STATE. A MINORITY COMMUNITY MAY BE A GROUP OF INDIVIDUALS
26 LIVING IN GEOGRAPHIC PROXIMITY TO ONE ANOTHER OR A GEOGRAPHICALLY
27 DISPERSED OR TRANSIENT SET OF INDIVIDUALS, SUCH AS MIGRANT

1 WORKERS, WHERE EITHER TYPE OF GROUP EXPERIENCES COMMON CONDITIONS
2 OF ENVIRONMENTAL EXPOSURE OR EFFECT. THE APPROPRIATE UNIT OF
3 GEOGRAPHIC ANALYSIS MAY BE A GOVERNING BODY'S JURISDICTION, A
4 NEIGHBORHOOD, CENSUS TRACT, OR OTHER SIMILAR UNIT THAT IS TO BE
5 CHOSEN SO AS TO NOT ARTIFICIALLY DILUTE OR INFLATE THE AFFECTED
6 MINORITY POPULATION.

7 (N) "PERMIT" MEANS A PERMIT UNDER PART 55. PERMIT DOES NOT
8 MEAN AUTHORIZATION TO MODIFY A FACILITY FOR CLOSURE.

9 (O) "SIGNIFICANT IMPACT" MEANS ANY IMPACT THAT MAY, INDIVID-
10 UALLY OR CUMULATIVELY, ADVERSELY AFFECT HUMAN HEALTH OR THE
11 ENVIRONMENT. SIGNIFICANT IMPACTS CAN RESULT FROM CUMULATIVE
12 EFFECTS.

13 (P) "SITE" MEANS THE LOCATION OF THE ACTIVITY FOR WHICH A
14 PERMIT IS SOUGHT.

15 SEC. 1302. THE REQUIREMENTS OF THIS PART APPLY IN ADDITION
16 TO ANY OTHER REQUIREMENTS OF THIS ACT. IF THERE IS A CONFLICT
17 BETWEEN A PROVISION OF THIS PART AND A PROVISION OF ANY OTHER
18 PART OF THIS ACT, THE PROVISION OF THIS PART APPLIES.

19 SEC. 1303. (1) THE DEPARTMENT MAY ON ITS OWN INITIATIVE
20 PREPARE A DETAILED ASSESSMENT OF THE INDIVIDUAL AND CUMULATIVE
21 IMPACTS OF THE ACTIVITY FOR WHICH THE PERMIT IS SOUGHT. THE
22 DEPARTMENT SHALL PREPARE THE ASSESSMENT IF BOTH OF THE FOLLOWING
23 APPLY:

24 (A) THERE IS A PUBLIC COMMENT PERIOD FOR THE PERMIT.

25 (B) ONE OR MORE OF THE FOLLOWING APPLY:

26 (i) THE ASSESSMENT IS REQUESTED BY THE GOVERNING BODY OF A
27 LOCAL UNIT OF GOVERNMENT, IF THE SITE FOR WHICH THE PERMIT IS

1 SOUGHT IS LOCATED WITHIN THAT LOCAL UNIT OF GOVERNMENT OR IN A
2 LOCAL UNIT OF GOVERNMENT ADJACENT TO THAT LOCAL UNIT OF
3 GOVERNMENT.

4 (ii) THE ASSESSMENT IS REQUESTED BY A LOCAL HEALTH DEPART-
5 MENT WHOSE JURISDICTIONAL AREA INCLUDES THE SITE FOR WHICH THE
6 PERMIT IS SOUGHT OR WHOSE JURISDICTIONAL AREA IS ADJACENT TO A
7 LOCAL UNIT OF GOVERNMENT THAT INCLUDES THE SITE FOR WHICH THE
8 PERMIT IS SOUGHT.

9 (iii) THERE IS A KNOWN PUBLIC CONTROVERSY OVER THE PERMIT.
10 THE DEPARTMENT SHALL MAKE A WRITTEN FINDING AS TO WHETHER THERE
11 IS A PUBLIC CONTROVERSY NOT MORE THAN 21 DAYS BEFORE THE BEGIN-
12 NING OF THE PUBLIC COMMENT PERIOD ON THE PERMIT.

13 (2) THE DEPARTMENT SHALL PREPARE THE ASSESSMENT BEFORE THE
14 PUBLIC COMMENT PERIOD BEGINS. THE DEPARTMENT MAY CHARGE THE
15 PERMIT APPLICANT A FEE BASED ON THE REASONABLE COSTS OF PREPARING
16 THE ASSESSMENT.

17 (3) THE ASSESSMENT SHALL DETERMINE POTENTIAL EFFECTS ON THE
18 AFFECTED COMMUNITY AND EXPOSURE PATHWAYS, INCLUDING BUT NOT
19 LIMITED TO DERMAL, INGESTION, INHALATION, AND EXISTING BODY
20 BURDEN. THE DEPARTMENT SHALL OVERLAY THIS INFORMATION WITH
21 INFORMATION OBTAINED FROM LOCATIONAL ANALYSES USING GEOGRAPHIC
22 INFORMATION SYSTEM AND CENSUS DATA TO IDENTIFY MINORITY COMMUNI-
23 TIES OR LOW-INCOME POPULATIONS THAT ARE LOCATED WITHIN THE IDEN-
24 TIFIED EXPOSURE PATHWAYS. THE ASSESSMENT MAY USE OTHER SOURCES
25 OF INFORMATION INCLUDING BUT NOT LIMITED TO THE FOLLOWING:

26 (A) THE NATIONAL HUMAN EXPOSURE ASSESSMENT SURVEY.

1 (B) THE NATIONAL HEALTH AND NUTRITION EXAMINATION SURVEY

2 III.

3 (C) ENVIRONMENTAL DATA FROM AIR MONITORING SYSTEMS.

4 (D) THE TOXIC RELEASE INVENTORY DATABASE.

5 (4) THE ASSESSMENT SHALL CONTAIN ALL OF THE FOLLOWING:

6 (A) A DESCRIPTION OF THE AFFECTED COMMUNITY.

7 (B) A DESCRIPTION OF THE POTENTIAL IMPACTS OF THE ACTIVITY
8 FOR WHICH THE PERMIT IS SOUGHT.

9 (C) A DESCRIPTION OF THE PROBABLE, UNAVOIDABLE ADVERSE
10 IMPACTS OF THE ACTIVITY FOR WHICH THE PERMIT IS SOUGHT.

11 (D) A DESCRIPTION OF OTHER LOCATIONS OF KNOWN OR POTENTIAL
12 ENVIRONMENTAL RISK IN THE HOST COMMUNITY WITHIN A 3-MILE RADIUS.

13 (E) A DESCRIPTION OF ANY VULNERABLE POPULATIONS IN THE
14 AFFECTED COMMUNITY, INCLUDING BUT NOT LIMITED TO CHILDREN WITH
15 ELEVATED BLOOD-LEAD LEVELS, THE ELDERLY, AND LOW-INCOME
16 POPULATIONS.

17 (F) A DESCRIPTION OF WHETHER THE HOST COMMUNITY OR AFFECTED
18 COMMUNITY IS PREDOMINANTLY RESIDENTIAL AND WHETHER PUBLIC OR PRI-
19 VATE SCHOOLS, RECREATIONAL FACILITIES, NURSING HOMES, HEALTH CARE
20 FACILITIES, PUBLIC HOUSING, DAY-CARE FACILITIES, LIBRARIES, OR
21 HOSPITALS ARE LOCATED WITHIN 3 MILES OF THE SITE.

22 (G) THE NUMBER OF JOBS EXPECTED TO BE CREATED BY THE ACTIV-
23 ITY FOR WHICH THE PERMIT IS SOUGHT, THE FACTS SUPPORTING THE
24 NUMBER OF JOBS EXPECTED TO BE CREATED, THE PERCENTAGE OF
25 FULL-TIME AND PART-TIME JOBS, OCCUPATIONAL CATEGORIES, THE PAY
26 SCALE FOR SUCH JOBS, THE PERCENT OF THE WORK FORCE FOR SUCH JOBS

1 THAT WOULD BE PAID MINIMUM WAGE, AND THE PERCENT OF THOSE
2 EXPECTED TO BE HIRED FOR SUCH JOBS FROM THE HOST COMMUNITY.

3 (H) A DESCRIPTION OF WHETHER THE SITE IS IN A HOST COMMUNITY
4 IN WHICH THE PERCENTAGE OF INDIVIDUALS WHO BELONG TO A RACIAL
5 MINORITY GROUP IS GREATER THAN IN THE COUNTY OR THE STATE.

6 (I) THE AGE OF THE POPULATION OF THE HOST COMMUNITY RELATIVE
7 TO THE COUNTY AND STATE ACCORDING TO THE MOST RECENT U.S. CENSUS
8 BUREAU REPORTS.

9 (J) A DESCRIPTION OF STATE OR LOCAL TAX ABATEMENTS OR SUBSI-
10 DIES RECEIVED BY THE APPLICANT, INCLUDING BUT NOT LIMITED TO
11 LOANS, INDUSTRIAL DEVELOPMENT BONDS, AND FUNDS OBTAINED FROM THE
12 MICHIGAN STRATEGIC FUND CREATED UNDER SECTION 5 OF THE MICHIGAN
13 STRATEGIC FUND ACT, 1984 PA 270, MCL 125.2005. THIS DESCRIPTION
14 SHALL INCLUDE A SUMMARY OF THE TOTAL COST TO THE TAXPAYERS OF THE
15 PROPOSED FACILITY.

16 (K) AN EVALUATION OF WHETHER THE APPLICANT HAS EVER BEEN
17 CITED FOR OR CONVICTED OF A VIOLATION OF STATE OR FEDERAL ENVI-
18 RONMENTAL, ANTITRUST, CONSUMER PROTECTION, ELECTION, EMPLOYMENT,
19 OR LABOR LAWS.

20 (L) AN EVALUATION OF ALTERNATIVES TO THE ACTIVITY FOR WHICH
21 THE PERMIT IS SOUGHT THAT MIGHT AVOID SOME OR ALL OF THE ADVERSE
22 IMPACTS, INCLUDING AN EXPLANATION OF WHY EACH ALTERNATIVE WAS NOT
23 SELECTED AND WHY THE DEPARTMENT DETERMINED TO PURSUE THE ACTION
24 IN ITS CONTEMPLATED FORM.

25 (M) THE POSSIBLE MODIFICATIONS TO THE ACTIVITY FOR WHICH THE
26 PERMIT IS SOUGHT OR MITIGATION MEASURES THAT WOULD ELIMINATE OR

1 MINIMIZE ADVERSE IMPACTS, INCLUDING A DISCUSSION OF THE
2 ADDITIONAL COSTS OF SUCH MODIFICATIONS OR MITIGATION MEASURES.

3 (5) UPON COMPLETION OF THE ASSESSMENT, THE DEPARTMENT SHALL
4 MAKE THE ASSESSMENT PART OF THE OFFICIAL RECORD OF THE
5 APPLICANT. THE DEPARTMENT SHALL PROVIDE COPIES OF THE ASSESSMENT
6 TO THE PUBLIC AT ANY PUBLIC HEARINGS, TO THE ENVIRONMENTAL EQUITY
7 AND JUSTICE COMMISSION, TO APPROPRIATE LOCAL AGENCIES, TO PUBLIC
8 AND PRIVATE ORGANIZATIONS, AND, UPON REQUEST, TO CITIZENS FOR
9 THEIR REVIEW AND COMMENT.

10 (6) THE DEPARTMENT SHALL PROVIDE A FORUM FOR PUBLIC COMMENTS
11 ON ANY ACTION THAT MAY HAVE ADVERSE IMPACTS IF IT DETERMINES THAT
12 THE PUBLIC HAS NOT HAD SUFFICIENT OPPORTUNITY TO BE HEARD.

13 (7) IF THE DEPARTMENT PREPARES AN ASSESSMENT, THE DEPARTMENT
14 SHALL NOT ISSUE A PERMIT UNLESS THE DEPARTMENT DETERMINES, BASED
15 ON THE ASSESSMENT, THAT THE ACTIVITY FOR WHICH THE PERMIT IS
16 SOUGHT WOULD NOT HAVE A SIGNIFICANT IMPACT.

17 SEC. 1304. (1) THE DEPARTMENT SHALL HOLD A PUBLIC HEARING
18 ON THE PERMIT APPLICATION IF 1 OR BOTH OF THE FOLLOWING APPLY:

19 (A) THE PUBLIC HEARING IS REQUESTED BY 1 OR MORE OF THE
20 FOLLOWING:

21 (i) A RESIDENT OF THE HOST COMMUNITY.

22 (ii) A MEMBER OF THE AFFECTED COMMUNITY AS DESCRIBED BY AN
23 ASSESSMENT UNDER SECTION 1303.

24 (iii) AN ENTITY DESCRIBED IN SECTION 1303(1)(B)(i) OR (ii).

25 (B) THERE IS A KNOWN PUBLIC CONTROVERSY OVER THE PERMIT
26 APPLICATION.

1 (2) A PUBLIC HEARING SHALL BE HELD IN THE CITY, VILLAGE, OR
2 TOWNSHIP OF THE PROPOSED FACILITY OR ACTIVITY AND AS CLOSE TO THE
3 SITE AS POSSIBLE. THE DEPARTMENT SHALL SEEK TO USE SCHOOLS OR
4 OTHER LOCAL FACILITIES, INCLUDING RELIGIOUS CENTERS, CHURCHES,
5 TEMPLES, OR MOSQUES.

6 (3) THE DEPARTMENT SHALL HOLD A PUBLIC HEARING AT A TIME AND
7 LOCATION THAT WILL ENABLE THE GREATEST NUMBERS OF INTERESTED
8 INDIVIDUALS TO ATTEND THE PUBLIC HEARING. THIS MAY REQUIRE THAT
9 PUBLIC HEARINGS BE CONVENED IN THE EVENING.

10 (4) THE DEPARTMENT SHALL MAINTAIN A RECORD SHOWING PUBLIC
11 HEARING PARTICIPANTS, THEIR ORGANIZATIONAL AFFILIATION, IF APPLI-
12 CABLE, AND A COMPLETE TEXT OF WRITTEN COMMENTS.

13 (5) DEPARTMENT OFFICIALS CONDUCTING PUBLIC HEARINGS SHALL
14 ANSWER QUESTIONS OF THE PUBLIC THAT THEY ARE ABLE TO ANSWER ON
15 ANY ISSUE PERTAINING TO THE APPLICATION. THE DEPARTMENT OFFI-
16 CIALS SHALL ENCOURAGE AND SOLICIT QUESTIONS FROM DEPARTMENT STAFF
17 AND STAFF REACTIONS TO PUBLIC INPUT.

18 (6) AT A PUBLIC HEARING, THE OPPORTUNITY FOR PUBLIC COMMENT
19 SHALL BE DISTRIBUTED EQUITABLY BETWEEN REGULATED PARTIES AND MEM-
20 BERS OF THE GENERAL PUBLIC.

21 (7) THE DEPARTMENT SHALL DETERMINE WHETHER THE ACTIVITY FOR
22 WHICH A PERMIT IS SOUGHT HAS THE POTENTIAL FOR DISPROPORTIONATE
23 ENVIRONMENTAL EFFECTS OR DISPROPORTIONATE HUMAN HEALTH EFFECTS.
24 IF SO, THE DEPARTMENT SHALL ATTEMPT TO PROVIDE INFORMATION TO THE
25 POTENTIALLY AFFECTED POPULATION AND TO SEEK INPUT FROM THE
26 AFFECTED LOW-INCOME POPULATION OR MINORITY COMMUNITY. THE
27 DEPARTMENT SHALL CONTACT LOCAL COMMUNITY MEMBERS OR INTEREST

1 GROUPS WITH SPECIFIC INTERESTS IN, OR UNDERSTANDINGS OF,
2 ENVIRONMENTAL JUSTICE ISSUES FOR ADVICE TO IDENTIFY POTENTIAL
3 AREAS OF CONCERN AND MITIGATION ACTIONS.

4 SEC. 1305. THE DEPARTMENT SHALL NOT ISSUE A PERMIT FOR A
5 HAZARDOUS OR MAJOR SOURCE TO LOCATE WITHIN 5,000 FEET OF ANY RES-
6 IDENTIAL PROPERTY, DAY-CARE PROPERTY, CHURCH PROPERTY, SCHOOL
7 PROPERTY, OR PARK PROPERTY.

8 SEC. 1306. (1) A PERSON SEEKING TO ENFORCE THIS PART MAY
9 SUE EITHER FOR SUCH PERSON OR FOR OTHER PERSONS SIMILARLY SITUAT-
10 ED, OR BOTH, IN THE CIRCUIT COURT FOR THE COUNTY IN WHICH THE
11 PERSON RESIDES OR IN THE CIRCUIT COURT FOR INGHAM COUNTY.

12 (2) THE RIGHTS AND REMEDIES PROVIDED BY THIS PART ARE IN
13 ADDITION TO, AND NOT IN LIEU OF, ANY OTHER STATUTORY RIGHTS AND
14 REMEDIES, AND ARE NOT INTENDED TO ALTER OR AFFECT OTHER STATUTORY
15 RIGHTS AND REMEDIES.

16 (3) A PERSON SEEKING TO ENFORCE THIS PART MUST BRING AN
17 ACTION WITHIN 3 YEARS OF THE TIME FOLLOWING A DECISION TO GRANT A
18 PERMIT.

19 (4) IN A SUIT UNDER THIS PART, THE COURT, IN ITS DISCRETION,
20 SHALL ALLOW THE PREVAILING PLAINTIFFS AN AWARD OF COSTS, INCLUD-
21 ING REASONABLE ATTORNEY FEES.

22 SEC. 1307. THIS PART APPLIES TO PERMITS ISSUED NOT LESS
23 THAN 120 DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION.