

Act No. 106
Public Acts of 1999
Approved by the Governor
July 7, 1999
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July 7, 1999
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STATE OF MICHIGAN
90TH LEGISLATURE
REGULAR SESSION OF 1999

Introduced by Reps. DeVuyst and Birkholz

ENROLLED HOUSE BILL No. 4471

AN ACT to amend 1994 PA 451, entitled "An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, and assessments; to provide certain appropriations; to prescribe penalties and provide remedies; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts," by amending sections 3104, 3109a, 3119, 30101, 30104, 30105, 30109, 32312, and 32513 (MCL 324.3104, 324.3109a, 324.3119, 324.30101, 324.30104, 324.30105, 324.30109, 324.32312, and 324.32513), section 3104 as amended by 1995 PA 169, section 3109a as added by 1995 PA 70, section 30101 as added by 1995 PA 59, section 30104 as amended by 1996 PA 97, sections 30105 and 30109 as amended by 1995 PA 171, section 32312 as amended by 1995 PA 168, and section 32513 as amended by 1995 PA 170.

The People of the State of Michigan enact:

Sec. 3104. (1) The department is designated the state agency to cooperate and negotiate with other governments, governmental units, and governmental agencies in matters concerning the water resources of the state, including, but not limited to, flood control, beach erosion control, and water quality control planning, development, and management. The department shall have control over the alterations of natural or present watercourses of all rivers and streams in the state to assure that the channels and the portions of the floodplains that are the floodways are not inhabited and are kept free and clear of interference or obstruction that will cause any undue restriction of the capacity of the floodway. The department may take steps as may be necessary to take advantage of any act of congress that may be of assistance in carrying out the purposes of this part, including the water resources planning act, Public Law 89-80, 42 U.S.C. 1962 to 1962-1 and 1962a to 1962d-3, and the federal water pollution control act, chapter 758, 86 Stat. 816, 33 U.S.C. 1251 to 1252, 1253 to 1254, 1255 to 1257, 1258 to 1263, 1265 to 1270, 1281, 1282 to 1293, 1294 to 1299, 1311 to 1313, 1314 to 1330, 1341 to 1345, 1361 to 1377, and 1381 to 1387.

(2) The department shall report to the governor and to the legislature at least annually any plans or projects being implemented or considered for implementation and shall include in the report requests for any legislation needed to implement any proposed projects or agreements made necessary as a result of a plan or project, together with any requests for appropriations. The department may make recommendations to the governor on the designation of areawide water quality planning regions and organizations relative to the governor's responsibilities under the federal water pollution control act.

(3) A person shall submit an application for a permit to alter a floodplain on a form approved by the department and shall include information that may be required by the department to assess the proposed alteration's impact on the floodplain. If an alteration includes activities at multiple locations in a floodplain, 1 application may be filed for combined activities.

(4) Except as provided in subsections (5) and (6), until October 1, 2003, an application for a floodplain permit shall be accompanied by a fee of \$500.00. Until October 1, 2003, if the department determines that engineering computations

are required to assess the impact of a proposed floodplain alteration on flood stage or discharge characteristics, the department shall assess the applicant an additional \$1,500.00 to cover the department's cost of review.

(5) Until October 1, 2003, an application for a floodplain permit for a minor project category shall be accompanied by a fee of \$100.00. Minor project categories shall be established by rule and shall include activities and projects that are similar in nature and have minimal potential for causing harmful interference.

(6) If work has been done in violation of a permit requirement under this part and restoration is not ordered by the department, the department may accept an application for a permit if the application is accompanied by a fee equal to 2 times the permit fee required under subsection (4) or (5).

(7) The department shall forward fees collected under this section to the state treasurer for deposit in the land and water management permit fee fund created in section 30113.

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

- (a) Part 301.
- (b) Part 303.
- (c) Part 323.
- (d) Part 325.
- (e) Section 117 of the land division act, 1967 PA 288, MCL 560.117.

Sec. 3109a. (1) Notwithstanding any other provision of this part, or rules promulgated under this part, the department shall allow for a mixing zone for discharges of venting groundwater in the same manner as the department provides for a mixing zone for point source discharges. Mixing zones for discharges of venting groundwater shall not be less protective of public health or the environment than the level of protection provided for mixing zones from point source discharges.

(2) Notwithstanding any other provision of this part, if a discharge of venting groundwater is in compliance with the water quality standards provided for in this part and the rules promulgated under this part, a permit is not required under this part for the discharge if the discharge is provided for in either or both of the following:

- (a) A remedial action plan that is approved by the department under part 201.
- (b) A corrective action plan that is submitted to the department under part 213 that includes a mixing zone determination made by the department and that has been noticed in the department calendar.
- (3) As used in this section:
 - (a) "Mixing zone" means that portion of a water body where a point source discharge or venting groundwater is mixed with receiving water.
 - (b) "Venting groundwater" means groundwater that is entering a surface water of the state from a facility, as defined in section 20101.

Sec. 3119. (1) The storm water 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. 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) Review of storm water permit applications.
- (b) Storm water permit development, issuance, reissuance, modification, and termination.
- (c) Surface water monitoring to support the storm water permitting process.
- (d) Assessment of compliance with storm water permit conditions.
- (e) Enforcement against storm water permit violations.
- (f) Classification of storm water control facilities.
- (g) Not more than 10% of the money in the fund for training for certification of storm water operators and educational material to assist persons regulated under this part.
- (5) Money in the fund shall not be used to support the direct costs of litigation undertaken to enforce this part.
- (6) Upon the expenditure or appropriation of money raised in section 3118 for any other purpose than those specifically listed in this section, authorization to collect fees under section 3118 shall be suspended until such time as the money expended or appropriated for purposes other than those listed in this section is returned to the fund.

Sec. 30101. As used in this part:

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

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

(c) "Department" means the department of environmental quality.

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

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

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

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

(h) "Minor offense" means either of the following violations of this part if the project involved in the offense is a minor project as listed in R 281.816 of the Michigan administrative code or the department determines that restoration of the affected property is not required:

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

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

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

(j) "Project" means an activity that requires a permit pursuant to section 30102.

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

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

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

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

(o) "Structure" includes a marina, wharf, dock, pier, dam, weir, stream deflector, breakwater, groin, jetty, sewer, pipeline, cable, and bridge.

(p) "Upland" means the land area that lies above the ordinary high-water mark.

Sec. 30104. (1) Before a project that is subject to this part is undertaken, a person shall file an application and receive a permit from the department. The application shall be on a form prescribed by the department and shall include any information that may be required by the department. If a project includes activities at multiple locations, 1 application may be filed for the combined activities.

(2) Except as provided in subsections (3) and (4), an application for a permit shall be accompanied by a fee based on an administrative cost in accordance with the following schedule:

(a) Until October 1, 2003:

(i) For a minor project listed in R 281.816 of the Michigan administrative code, or a seasonal drawdown or the associated reflooding, or both, of a dam or impoundment for the purpose of weed control, a fee of \$50.00. However, for a permit for a seasonal drawdown or associated reflooding, or both, of a dam or impoundment for the purpose of weed control that is issued for the first time after October 9, 1995, an initial fee of \$500.00 with subsequent permits for the same purpose being assessed a \$50.00 fee.

(ii) For construction or expansion of a marina, a fee of:

(A) \$50.00 for an expansion of 1-10 slips to an existing permitted marina.

(B) \$100.00 for a new marina with 1-10 proposed marina slips.

- (C) \$250.00 for an expansion of 11-50 slips to an existing permitted marina, plus \$10.00 for each slip over 50.
- (D) \$500.00 for a new marina with 11-50 proposed marina slips, plus \$10.00 for each slip over 50.
- (E) \$1,500.00 if an existing permitted marina proposes maintenance dredging of 10,000 cubic yards or more or the addition of seawalls, bulkheads, or revetments of 500 feet or more.
- (iii) For renewal of a marina operating permit, a fee of \$50.00.
- (iv) For major projects other than a project described in subparagraph (ii)(E), involving any of the following, a fee of \$2,000.00:
 - (A) Dredging of 10,000 cubic yards or more.
 - (B) Filling of 10,000 cubic yards or more.
 - (C) Seawalls, bulkheads, or revetment of 500 feet or more.
 - (D) Filling or draining of 1 acre or more of wetland contiguous to a lake or stream.
 - (E) New dredging or upland boat basin excavation in areas of suspected contamination.
 - (F) Shore projections, such as groins and underwater stabilizers, that extend 150 feet or more into a lake or stream.
 - (G) New commercial docks or wharves of 300 feet or more in length.
 - (H) Stream enclosures 100 feet or more in length.
 - (I) Stream relocations 500 feet or more in length.
 - (J) New golf courses.
 - (K) Subdivisions.
 - (L) Condominiums.
- (v) For all other projects not listed in subparagraphs (i) through (iv), a fee of \$500.00.
- (b) Beginning October 1, 2003, a fee of \$25.00 for any project listed in subdivision (a).
- (3) A project that requires review and approval under this part and 1 or more of the following acts or parts of acts is subject to only the single highest permit fee required under this part or the following acts or parts of acts:
 - (a) Part 303.
 - (b) Part 323.
 - (c) Part 325.
 - (d) Section 3104.
 - (e) Section 117 of the land division act, 1967 PA 288, MCL 560.117.
- (4) If work has been done in violation of a permit requirement under this part and restoration is not ordered by the department, the department may accept an application for a permit if the application is accompanied by a fee equal to 2 times the permit fee required under this section.

Sec. 30105. (1) Until October 1, 2003, a person who desires notification of pending applications may submit a written request to the department accompanied by an annual fee of \$25.00. The department shall forward all annual fees to the state treasurer for deposit into the fund. The department shall prepare a monthly list of the applications made during the previous month and shall promptly mail copies of the list for the remainder of the calendar year to the persons who have so requested notice. The monthly list shall state the name and address of each applicant, the legal description of the lands included in the applicant's project, and a summary statement of the purpose of the project. The department may hold a public hearing on pending applications.

(2) Except as otherwise provided in this section, upon receiving an application, the department shall submit copies for review to the director of the department of community health or the local health department designated by the director of the department of community health, to the city, village, or township and the county where the project is to be located, to the local soil conservation district, to the watershed council organized under part 311, if any, to the local port commission, if any, and to the persons required to be included in the application pursuant to section 30104(1). Each copy of the application shall be accompanied by a statement that unless a written request is filed with the department within 20 days after the submission for review, the department may grant the application without a public hearing where the project is located. The department may hold a public hearing upon the written request of the applicant or a riparian owner or a person or governmental unit that is entitled to receive a copy of the application pursuant to this subsection.

(3) After completion of a project for which an application is approved, the department may cause a final inspection to be made and certify to the applicant that the applicant has complied with the department's permit requirements.

(4) At least 10 days' notice of a hearing to be held under this section shall be given by publication in a newspaper circulated in the county where the project is to be located and by mailing copies of the notice to the persons who have

requested the monthly list pursuant to subsection (1), to the person requesting the hearing, and to the persons and governmental units that are entitled to receive a copy of the application pursuant to subsection (2).

(5) The department shall grant or deny the permit within 60 days, or within 90 days if a public hearing is held, after the filing of an application pursuant to section 30104. If a permit is denied, the department shall provide to the applicant a concise written statement of its reasons for denial of the permit, and, if it appears that a minor modification of the application would result in the granting of the permit, the nature of the modification shall be stated. In an emergency, the department may issue a conditional permit before the expiration of the 20-day period referred to in subsection (2).

(6) The department, by rule promulgated under section 30110(1), may establish minor project categories of activities and projects that are similar in nature and have minimal adverse environmental impact. The department may act upon an application received pursuant to section 30104 for an activity or project within a minor project category after an on-site inspection of the land and water involved without providing notices or holding a public hearing pursuant to subsection (2). A final inspection or certification of a project completed under a permit granted pursuant to this subsection is not required, but all other provisions of this part are applicable to a minor project.

Sec. 30109. Upon the written request of a riparian owner and upon payment of a service fee, the department may enter into a written agreement with a riparian owner establishing the location of the ordinary high-water mark for his or her property. In the absence of substantially changed conditions, the agreement shall be conclusive proof of the location in all matters between the state and the riparian owner and his or her successors in interest. Until October 1, 2003, the service fee provided for in this section shall be \$500.00. Beginning October 1, 2003, the service fee provided for in this section shall be \$50.00. The department shall forward all service fees to the state treasurer for deposit into the fund.

Sec. 32312. (1) The department, in order to regulate the uses and development of high-risk areas, flood risk areas, and environmental areas and to implement the purposes of this part, shall promulgate rules. Until October 1, 2003, if permits are required pursuant to rules promulgated under this part, a fee of \$500.00 shall be submitted to the department with each application for a commercial or multi-family residential project, a fee of \$100.00 shall be submitted with each application for a single-family home construction, and a fee of \$50.00 shall be submitted with each application for an addition to an existing single-family home or for a project that has a minor impact on fish and wildlife resources in environmental areas as determined by the department.

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

- (a) Part 301.
- (b) Part 303.
- (c) Part 325.
- (d) Section 3104.
- (e) Section 117 of the land division act, 1967 PA 288, MCL 560.117.

(3) The department shall forward fees collected under this section to the state treasurer for deposit in the land and water management permit fee fund created in section 30113.

(4) A circuit court, upon petition and a showing by the department that a violation of a rule promulgated under subsection (1) exists, shall issue any necessary order to the defendant to correct the violation or to restrain the defendant from further violation of the rule.

Sec. 32513. (1) Before any work or connection specified in section 32512 is undertaken, a person shall file an application with the department of environmental quality setting forth the following:

- (a) The name and address of the applicant.
- (b) The legal description of the lands included in the project.
- (c) A summary statement of the purpose of the project.
- (d) A map or diagram showing the proposal on an adequate scale with contours and cross-section profiles of the waterway to be constructed.
- (e) Other information required by the department of environmental quality.

(2) Except as provided in subsections (3) and (4), an application for a permit under this section shall be accompanied by a fee according to the following schedule:

- (a) Until October 1, 2003:
 - (i) For activities included in the minor project category as described in rules promulgated under this part, \$50.00.
 - (ii) For construction or expansion of a marina, a fee of:
 - (A) \$50.00 for an expansion of 1-10 slips to an existing permitted marina.

(B) \$100.00 for a new marina with 1-10 proposed marina slips.

(C) \$250.00 for an expansion of 11-50 slips to an existing permitted marina, plus \$10.00 for each slip over 50.

(D) \$500.00 for a new marina with 11-50 proposed marina slips, plus \$10.00 for each slip over 50.

(E) \$1,500.00 if an existing permitted marina proposes maintenance dredging of 10,000 cubic yards or more or the addition of seawalls, bulkheads, or revetments of 500 feet or more.

(iii) For major projects other than a project described in subparagraph (ii)(E), involving any of the following, a fee of \$2,000.00:

(A) Dredging of 10,000 cubic yards or more.

(B) Filling of 10,000 cubic yards or more.

(C) Seawalls, bulkheads, or revetment of 500 feet or more.

(D) Filling or draining of 1 acre or more of coastal wetland.

(E) New dredging or upland boat basin excavation in areas of suspected contamination.

(F) New breakwater or channel jetty.

(G) Shore protection, such as groins and underwater stabilizers, that extend 150 feet or more on Great Lakes bottomlands.

(H) New commercial dock or wharf of 300 feet or more in length.

(iv) For all other projects not listed in subparagraphs (i) through (iii), \$500.00.

(b) Beginning October 1, 2003, a fee of \$50.00 for any project listed in subdivision (a).

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

(a) Part 301.

(b) Part 303.

(c) Part 323.

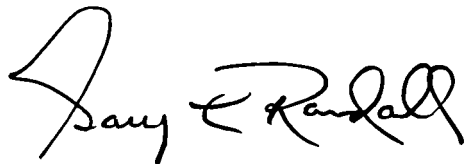
(d) Section 3104.

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

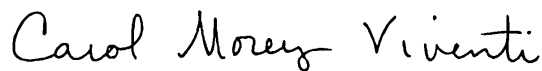
(4) If work has been done in violation of a permit requirement under this part and restoration is not ordered by the department of environmental quality, the department of environmental quality may accept an application for a permit if the application is accompanied by a fee equal to 2 times the permit fee required under this section.

(5) The department of environmental quality shall forward all fees collected under this section to the state treasurer for deposit into the land and water management permit fee fund created in section 30113.

This act is ordered to take immediate effect.



Clerk of the House of Representatives.



Secretary of the Senate.

Approved _____

Governor.