



Telephone: (517) 373-5383 Fax: (517) 373-1986 TDD: (517) 373-0543

Senate Bill 252 (Substitute CR-2) Sponsor: Senator Burton Leland Senate Committee: Appropriations

House Committee: Government Operations

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CONTENT

The bill would amend Part 31 (Water Resources Protection) of the National Resources and Environmental Protection Act to do the following regarding storm water dischargers:

- -- Increase the permit fees paid by dischargers of storm water; create different fees for municipal separate storm sewer systems based on the population served; and sunset the fees on October 1, 2009.
- -- Require the Department of Environmental Quality (DEQ), by each January 1 beginning in 2006, to report to the Legislature and the Governor on the departmental activities of the previous fiscal year funded by the Storm Water Fund.
- -- Allow a facility to challenge its annual permit fee through an administrative appeal.
- -- Provide that failure to pay the required fee would be a violation of the Act.
- -- Allow a municipality to appeal a fee based on population changes from the last decennial census.

For NPDES nonstorm water dischargers, the bill would do the following:

- -- Until October 1, 2009, require wastewater discharge permit holders to submit an application fee and pay an annual permit fee based in part on EPA designations, with separate levels for municipal facilities.
- -- Permit a municipality to pass on a proportionate share of its permit fee to each user of the municipal facility.
- -- Allow a facility to challenge its annual permit fee through an administrative appeal.
- -- Require the DEQ to assess a late fee of 0.75% on all permit fees paid after the due date.
- -- Establish the "National Pollutant Discharge Elimination System Fund" (NPDES Fund), which the DEQ would use to administer the NPDES wastewater program.
- -- Require the DEQ, by each January 1 beginning in 2006, to report to the Legislature and the Governor on the departmental activities of the previous fiscal year funded by the NPDES Fund.
- -- Require the DEQ to grant or deny a new permit within 180 days and a reissuance by September 30 of the submittal year.
- -- Require the Department to refund the application fee and 15% of the permit for failure to meet the decision deadlines.

The bill also would:

- -- Sunset on December 31, 2006, the DEQ's ability to promulgate administrative rules regarding Part 31 unless specific rule-making authority were authorized by law.
- -- Allow a defendant in a civil action to request a change of venue within 21 days of service of process.

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Wastewater Discharge Permit Fee

An NPDES wastewater permit establishes how much pollution may be discharged based on wastewater flow, the amount of conventional and toxic pollutants in the discharge, the quality of the water into which pollutants are discharged, the potential impact of the discharge on public health, and the proximity of the discharge to nearby coastal waters. Each permit is effective for five years. Dischargers do not currently pay any fee to obtain an NPDES wastewater discharge permit. The bill would establish an annual permit fee and an application fee payable every five years for permitted facilities.

Application Fees: An application for a permit authorizing a discharge into surface water, other than a storm water discharge, would have to be accompanied by an application fee as follows:

- -- EPA major facility: \$750.
- -- EPA minor facility, individual permit: \$400.
- -- EPA minor facility, general permit: \$75.

Permit Fees: A person who received a permit to discharge sewage or other waste disposal into the waters of the State would be subject to an annual permit fee as shown in Table 1. The fees would be assessed based on whether a facility was permitted as EPA major or minor, municipal or nonmunicipal, individual or general permit, had an agricultural purpose, or was high or low flow as of October 1 prior to the billing cycle. Facilities that held permits but had no discharge and were connected and authorized to discharge only to a municipal wastewater treatment system, would have to pay an annual permit maintenance fee of \$100.

The DEQ would have 180 days to grant or deny a new permit and until September 30 of the submitted year for a reissuance, or else forfeit the application fee and 15% of the annual permit fee. The Department would have to provide notification of the fee by December 1 and payment would have to be postmarked by February 15 or 45 days after receipt of notification, whichever is later. A late payment penalty of 0.75% of the total due would be imposed for each month or portion of a month the payment was past due.

Storm Water Discharge Permit Fees

The Storm Water Program within the NPDES requires permits for various types of pollution discharge and the United States Environmental Protection Agency (EPA) certifies states to administer the permits. Storm water dischargers include industrial facilities, construction sites, and municipal separate storm sewer systems (MS4s). Storm water discharge permits are valid for five years. The Department of Environmental Quality estimates that 550 MS4s, 14,000 construction sites, and selected municipal facilities in Michigan that were previously exempted from storm water permits need to obtain permits under Phase II regulations implemented by the EPA on March 10, 2003. Storm water discharge fees sunseted on October 1, 2003. Construction sites paid a one-time fee of \$125. The annual fee for all other dischargers, including industrial facilities and MS4s, was \$200.

Permit Fee: Under the bill, the fees for storm water discharge permits would be increased for all types of facilities. The bill would set the one-time permit fee for construction sites at \$400, an increase of \$275 from the previous fee of \$125. Construction sites between one and five acres would be covered by a Permit by Rule. They would be required to file a Notice of Coverage and a permit fee to comply with the storm water discharge regulations. Industrial and commercial sites would pay an annual permit fee of \$260, an increase of \$60 from the previous fee of \$200. Selected municipal facilities, such as power plants, airports, and bus or truck garages, would be subject to the fee for industrial facilities.

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The permit fee for municipalities would be based on the population served by the storm system. If the population served by an MS4 were different from the latest decennial census, the permittee could appeal the annual fee determination and submit written verification of the actual population served by the system. County storm sewers would be assessed a permit fee of \$3,000 and other MS4 institutions, such as a university or school district, would pay a permit fee of \$500. Table 2 below shows the proposed fees for each size of municipality. The Department would have to provide notification of the fee by February 1 and payment be postmarked by March 15 or 45 days after receipt of notification, whichever was later.

Provisions In Common

The bill contains a number of provisions that would apply to both the wastewater and the storm water discharge permitting programs. All fees would be nonrefundable. In the case of a late payment, the Department would be authorized to take enforcement action. Appeals of a fee or penalty would be limited to an administrative appeal under Section 631 of the Revised Judicature Act within 30 days of receipt of the annual fee determination. For both programs, the Attorney General could bring an action for the collection of the annual permit fee.

The bills would create a sunset of October 1, 2009, for the discharge fees and would require the Department to submit to the Legislature, by January 1 beginning in 2006, an annual workload analysis report on each of the permitting programs.

Individual funds would receive the permit and application fee revenue for each of these programs. The National Pollutant Discharge Elimination System Fund would be created and money in the Fund at the close of the fiscal year would have to remain in the Fund and not lapse to the General Fund. The DEQ would be allowed to spend money from the Fund, upon appropriation, only for administration of the NPDES program.

The Storm Water Fund currently exists in statute. The Fund receives all storm water discharge permit fee revenue and interest collected on late payments. Money in the Fund does not lapse to the General Fund at the end of a fiscal year. Authorized uses of the Fund are storm water-related activities. To the list of allowable uses, the bill would add regional and statewide public education to enhance the effectiveness of storm water permits.

MCL 324.3103 et al.

FISCAL IMPACT

Wastewater Discharge Fee: Under the bill, total annual revenue from both permit fees and application fees would be approximately \$3,000,000. The bill would set flat, annual permit fees for permitted dischargers. The fees would vary according to a facility's classification as major or minor, high or low flow, and whether the permit is an individual or general permit and the entity has an agricultural purpose. Currently, there are 1,409 NPDES permits issued under this program. Permit fee revenue of approximately \$2,924,000 would be collected annually under the bill. The bill also would establish application fees, which would vary by the type of facility. NPDES permits are effective for five years. Total collections over five years of application fees would be about \$383,000, with approximately \$76,600 collected annually.

Year-to-date appropriations for the DEQ in FY 2003-04 include \$3,090,700 in NPDES fee revenue and \$2,342,900 General Fund for a total of \$5,433,600 in State spending for the NPDES wastewater program in FY 2003-04. This is an increase of \$412,700 over FY 2002-03 funding for the program.

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Storm Water Discharge Fee: Phase II of the Federal storm water program and the implementation of the rules will significantly increase the number of permit applications reviewed by the Department and subsequent enforcement activities. The year-to-date FY 2003-04 appropriation includes an additional \$1,333,700 and 5.0 FTEs for storm water activities to fulfill the Department of Environmental Quality's obligations under the new Federal rules. In FY 2002-03, 14.5 FTEs and \$1,364,000 from storm water permit fees were appropriated for the storm water discharge program. Since the storm water discharge program is one component of the State's NPDES authority, failure of the State to administer one part of the program would result in removal of the entire authority and the EPA Region 5 would take over the responsibilities.

Fiscal Analyst: Jessica Runnels

Table 1: Proposed Fees for Wastewater Discharge Permits	
Type of Facility	Fee
EPA Major Facility	
Industrial	\$8,700
Municipal, 500+ MGD	\$213,000
Municipal, 50-499 MGD	\$20,000
Municipal, 10-49 MGD	\$13,000
Municipal, 1-9 MGD	\$5,500
EPA Minor Facility	
General Permit, low-flow	\$150
General Permit, high-flow	\$400
Individual Permit, low-flow	\$1,650
Individual Permit, high-flow	\$3,650
Municipal, 10+ MGD	\$3,775
Municipal, 1-9 MGD	\$3,000
Municipal, less than 1 MGD	\$1,950
General Permit, high-flow	\$600
General Permit, low-flow	\$400
Municipal CSO Facility	\$6,000
Wastewater Stabilization	\$1,525
Lagoon	
Agricultural Purpose	
General, low-flow	\$150
All Others, Non-Major	\$600
No Discharge	\$100

Sewer Systems	
Population Range	Proposed Annual Fee
0 - 1,000	\$500
1,001 - 3,000	1,000
3,001 - 10,000	2,000
10,001 - 30,000	3,000
30,001 - 50,000	4,000
50,001 - 75,000	5,000
75,001 - 100,000	6,000
Greater than 100,000	7,000
MS4 institutions	500
Counties	3,000

Table 2: Proposed Fees for Municipal Separate Storm

MGD = 1 million gallons per day

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.