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Senate Bill 252 (Substitute S-7 as passed by the Senate)  
Sponsor: Senator Liz Brater  
Committee: Natural Resources and Environmental Affairs

Date Completed: 6-26-03

## **CONTENT**

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

- **Require that applicants for a wastewater discharge permit submit an application fee until October 1, 2007.**
- **Until October 1, 2007, require wastewater discharge permit holders to pay an annual permit fee.**
- **Establish the permit fees for various categories of facilities, based in part on Environmental Protection Agency (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.**
- **Require a permit application to include the pollution prevention efforts the applicant had evaluated and undertaken.**
- **Require the Department of Environmental Quality (DEQ) to compile information obtained from permit applications and post it on the Department website.**
- **Require the DEQ to assess a late fee on all permit fees paid after the January 15 due date.**
- **Establish the National Pollutant Discharge Elimination System (NPDES) Fund, which the DEQ would use to administer the NPDES 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 Fund.**

The bill would take effect October 1, 2003.

### Application Fees

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

- EPA major facility: \$1,000.
- EPA minor facility, individual permit: \$500.
- EPA minor facility, general permit: \$100.
- Major modification of an existing permit: \$500.

The bill would define "EPA major facility" as a facility designated by the EPA as being a major facility under 40 C.F.R. 122.2. (That Federal rule establishes two separate designations for municipal and industrial facilities. If owned by a municipality, a major facility is one that has a water flow of 1 million gallons per day, annually averaged. If an industrial facility, a major facility is one that meets criteria based on flow, toxic pollutant potential, public health impact, and other factors.) The bill would define "EPA minor facility" as a facility that was not an EPA major facility.

A permit would have to be reissued by September 30 of the year following submittal of an administratively complete application.

### 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 abbreviation "MGD" would mean 1 million gallons per day.)

Table 1: Proposed Wastewater Permit Fees

Type of Facility	Fee
<b>EPA Major Facility</b>	\$9,822
Municipal, 500+ MGD	\$66,918
Municipal, 50-499 MGD	\$20,596
Municipal, 10-49 MGD	\$13,044
Municipal, 1-9 MGD	\$5,608
<b>EPA Minor Facility</b>	
General Permit, low-flow	\$559
General Permit, high-flow	\$838
Individual Permit, low-flow	\$2,101
Individual Permit, high-flow	\$4,380
Municipal, 10+ MGD	\$3,775
Municipal, 1-9 MGD	\$2,875
Municipal, less than 1 MGD	\$1,970
General Permit, high-flow	\$716
General Permit, low-flow	\$476
<b>Municipal CSO Facility</b>	\$6,504
<b>Wastewater Stabilization Lagoon</b>	\$1,583

Facilities that held permits but did not discharge, or discharged only to a municipal wastewater treatment system, would have to pay an annual permit maintenance fee of \$100.

"Municipal facility" would mean a facility owned or operated by a local unit, authority, or other public body, including an intermunicipal agency of two or more municipalities, authorized or created under State law. "Low-flow facility" would mean a facility that discharged less than 1 MGD. "High-flow facility" would mean a facility that discharged 1 MGD or more.

"General permit" would mean a permit suitable for use at facilities meeting eligibility criteria as specified in the permit. With a general permit, the discharge from a specific facility would be acknowledged through a certificate of coverage issued to the facility. "Individual permit" would mean a permit developed for a particular facility, taking its specific characteristics into account.

The bill would define "CSO facility" as a facility whose discharge was solely a combined sewer overflow. ("Combined sewer overflow" would

mean a discharge from a combined sewer system that occurred when the flow capacity of the combined sewer system was exceeded at a point prior to the headworks of a publically owned treatment works during wet weather conditions. "Combined sewer system" would mean a sewer designed and used to convey both storm water runoff and sanitary sewage, and which contained lawfully installed regulators and control devices that allowed for delivery of sanitary flow to treatment during dry weather periods and divert storm water and sanitary sewage to surface waters during storm flow periods.)

"Wastewater stabilization lagoon" would mean a type of treatment system constructed of ponds or basins designed to receive, hold, and treat sanitary wastewater for a predetermined amount of time, through a combination of physical, biological and chemical processes.

#### Payment of Fees

The DEQ would have to send invoices for annual permit fees to all permit holders by December 1 each year. The fees would have to be submitted by January 15 of each year. The DEQ would have to forward fees to the State Treasurer for deposit into the proposed NPDES Fund.

The DEQ would have to assess a penalty on all annual permit fee payments after the due date, in an amount equal to 0.75% of the payment due for each month, or portion of a month, the payment remained past due.

If a permittee wished to challenge its annual permit fee, the owner or operator would have to submit the challenge in writing to the DEQ. The Department could not process the challenge unless the DEQ received it by March 1 of the year the payment was due. A challenge would have to identify the facility and state the grounds upon which the challenge was based. Within 30 calendar days after receiving the challenge, the DEQ would have to determine its validity and give the permittee notification of a revised annual permit fee, and a refund, if appropriate, or a statement setting forth the reason or reasons why the annual permit fee was not revised. Payment of the challenged or revised annual permit fee would be due within 30 days after the permittee received the notice. If the owner or operator of a facility desired to

challenge its annual permit fee further, the owner or operator would have an opportunity for a contested case hearing as provided under the Administrative Procedures Act.

The Attorney General could bring an action for the collection of the annual permit fee.

#### Permit Issuance Timeline

Under the Act, a person seeking a new or increased use of the waters of the State for sewage or other waste disposal purposes must apply for a permit from the DEQ. The Department must either grant or deny a permit within 180 days after receiving a complete application, unless both parties agree to extend the time period. The bill would retain this deadline for new permits. Renewed permits would have to be reissued by September 30 of the year following submittal of an administratively complete application.

#### Fund

The bill would create the National Pollutant Discharge Elimination System Fund in the State Treasury. The State Treasurer could receive money or other assets from any source for deposit into the Fund, and would have to direct the investment of the Fund. The Treasurer would have to credit to the Fund interest and earnings from Fund investments. 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 have to spend money from the Fund, upon appropriation, only for administration of the NPDES program including, but not limited to, all of the following:

- Water quality standards development and maintenance.
- Permit development and issuance.
- Maintenance of program data.
- Ambient water quality monitoring conducted to determine permit conditions and evaluate the effectiveness of permit requirements.
- Activities conducted to determine a discharger's permit compliance status, including inspections, discharge monitoring, and review of submittals.
- Laboratory services.
- Enforcement.
- Program administration activities.

#### Report

Each year by January 1, beginning in 2006, the DEQ would have to prepare a report and submit it to the Governor, the Legislature, the chairs of the Senate and House standing committees with primary responsibility for issues related to natural resources and the environment, and the chairs of the subcommittees of the Senate and House Appropriations Committees with primary responsibility for appropriations to the DEQ. The report would have to detail the departmental activities of the previous fiscal year, funded by the NPDES Fund. At a minimum, the report would have to include each of the following, as it related to the DEQ:

- The number of full-time equated positions performing each of the following functions: permit issuance and development, compliance, and enforcement in the aggregate.
- The number of new NPDES permit applications received by the DEQ in the preceding year.
- The number of renewal permits in the preceding year.
- The number of permit modifications requested in the preceding year.
- The number of staff hours dedicated to each of the proposed fee categories.
- The number of permits issued for fee categories.
- The average number of days from the date of being administratively complete.
- The number of applications denied.
- The number of permit applications withdrawn by the applicant.
- The percentage and number of permit applications that were reviewed for administrative completeness within 10 days of receipt by the DEQ.
- The percentage and number of permit applications submitted to the DEQ that were administratively complete as received.
- The percentage and number of new permit applications for which the DEQ took a final action within 180 days.
- The percentage and number of permit renewals and modifications processed within the required time.
- The number of permits reopened by the DEQ.
- The number of unfilled positions.
- The amount of revenue in the Fund at the end of the fiscal year.

MCL 324.3111 & 324.3113

## **FISCAL IMPACT**

Under the bill, total annual revenue from both permit fees and application fees would be approximately \$3,490,000.

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. There are 1,407 NPDES permits issued under this program. Permit fee revenue of approximately \$3,392,000 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 \$495,000, with \$98,000 collected annually.

In the House-passed version of the FY 2003-04 budget for the DEQ, the program is supported with \$4,267,800 General Fund, which is 85% of the program's current year appropriations. The budget bill would appropriate \$5,020,900 if a fee for the NPDES program were enacted before September 30, 2003.

The version of the DEQ appropriations bill adopted by the Senate includes \$3,524,500 in NPDES fee revenue and \$1,922,900 General Fund for a total of \$5,447,400 in State spending for the NPDES program in FY 2003-04. This is an increase of \$426,500 over current year funding for the program. The Senate-passed appropriations bill specifies that the funding increase is for compliance activities.

If this fee proposal is not adopted, two situations might occur. If General Fund support for the NPDES program is restored, then the current program will continue. If General Fund support is not restored, then the State will no longer have the resources to administer these permits. Since this is a Federal program, the Environmental Protection Agency (EPA) would be required to establish an NPDES permit program in Michigan. All other states in EPA Region 5 operate their own NPDES permit program and the EPA does not currently have the resources and staff to operate such a permit program. According to

the Department, it would take EPA Region 5 approximately one year to organize an administrative office for this purpose.

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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.