

SUBSTITUTE FOR
HOUSE BILL NO. 4730

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending section 30113 (MCL 324.30113), as amended by 1995 PA
171, and by adding part 33; and to repeal acts and parts of
acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 PART 33 AQUATIC NUISANCE CONTROL

2 Sec. 3301. As used in this part:

3 (a) "Active ingredient" means an ingredient that will
4 prevent, destroy, repel, or control target organisms, act as a
5 plant regulator, defoliant, or desiccant, or otherwise alter the
6 behavior of aquatic nuisance organisms.

7 (b) "Algae" means any of the group of nonvascular aquatic
8 plants that do not have stems, flowers, leaves, or roots, and
9 that are single-celled, colonial, or filamentous forms.

(c) "Applicant" means any of the following:

(i) A person who is the bottomland owner.

(ii) A lake board established under section 30902.

(iii) A state or local governmental entity.

(iv) A person who has written authorization to act on behalf of a person described in subparagraph (i), (ii), or (iii).

(d) "Aquatic nuisance" means an organism that lives or propagates, or both, within the aquatic environment and that impairs the use or enjoyment of the waters of the state, including the intermediate aquatic hosts for schistosomes that cause swimmer's itch.

(e) "Aquatic vegetation" means both algae and higher aquatic plants.

(f) "Area of impact" means the area or areas within a waterbody where pesticides have been directly applied.

(g) "Certificate of coverage" means written authorization from the department to implement a project under a general permit.

(h) "Chemical" means any product designed to control, aid in the control, eliminate, or restrict the growth of aquatic nuisances.

(i) "Commercial applicator" means a person who is required to be a registered or certified applicator under part 83, who uses or supervises the use of a restricted use pesticide, or who holds himself or herself out to the public as being in the business of applying pesticides.

Sec. 3302. As used in this part:

1 (a) "Department" means the department of environmental
2 quality.

3 (b) "Director" means the director of the department.

4 (c) "Emergency notification procedure" means a
5 department-approved procedure submitted annually by a commercial
6 applicator, or state or local governmental entity, which provides
7 a description of all available means of contact, such as home
8 telephone number, business telephone number, mobile telephone
9 number, or pager number.

10 (d) "EPA" means the United States environmental protection
11 agency.

12 (e) "FIFRA" means the federal insecticide, fungicide, and
13 rodenticide act, 7 USC 136 to 136y.

14 (f) "General permit" means a permit for a category of
15 activities that the department determines will not negatively
16 impact human health and will have no more than minimal short-term
17 adverse impacts on the natural resources and environment.

18 (g) "Higher aquatic plant" means any of a group of
19 vascularized plants that have true stems, flowers, leaves, and
20 roots, that live in water, and that belong to the class
21 angiospermae.

22 Sec. 3303. As used in this part:

23 (a) "Labeling" means that term as defined in section 8304.

24 (b) "Littoral zone" means the area of a waterbody from the
25 water's edge to the limit of the depth of light penetration where
26 rooted aquatic vegetation typically grows.

27 (c) "Outlet" means any natural or artificially created

1 watercourse or structure which allows passage of water out of a
2 waterbody into other surface waters of the state, in a continuous
3 flow.

4 (d) "Pesticide" means a substance or mixture of substances
5 intended for preventing, destroying, repelling, or mitigating
6 aquatic nuisances.

7 (e) "Swimmer's itch" means the inflammation of a swimmer's
8 skin resulting from an allergic reaction to the penetration of
9 the skin by the immature stages of blood fluke parasites which
10 live a part of their life cycle in certain aquatic snails.

11 (f) "Unexpected negative impacts" means substantial and
12 identifiable negative impacts to the natural resources or the
13 public trust therein of a type or magnitude not considered by the
14 EPA or the Michigan department of agriculture in the decision to
15 register a pesticide under FIFRA or part 83, respectively.

16 (g) "Waters of the state" or "waterbody" means groundwaters,
17 lakes, ponds, rivers, streams, and wetlands and all other
18 watercourses and waters within the jurisdiction of this state
19 including the Great Lakes bordering this state.

20 Sec. 3304. (1) Subject to subsection (2), a person shall
21 not chemically treat either of the following for purposes of
22 aquatic nuisance control unless the person has obtained from the
23 department an individual permit or a certificate of coverage
24 under a general permit:

25 (a) Waters of the state, if water is visibly present or
26 contained in the area of impact at the time of chemical
27 treatment.

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1 (b) The Great Lakes and Lake St. Clair if the area of impact
2 is exposed bottomland located below the ordinary high-water
3 mark.

4 (2) A person may chemically treat waters of the state for
5 purposes of aquatic nuisance control without obtaining from the
6 department an individual permit or a certificate of coverage
7 under a general permit if all of the following criteria are met:

8 (a) The waterbody does not have an outlet.

9 (b) The department of natural resources does not have
10 information on record that the area of impact is utilized by
11 species on [a list of endangered or threatened species referred to in
12 section 36505.

13]

14 (c) The waterbody has a surface area of less than 10 acres.

15 (d) If the bottomlands of the waterbody are owned by more
16 than 1 person, written permission for the proposed chemical
17 treatment is obtained from each owner.

18 (3) A person conducting a chemical treatment authorized under
19 subsection (2) shall maintain any written permissions required
20 under subsection (2) and records of treatment, including
21 treatment date, chemicals applied, amounts applied, and a map
22 indicating the area of impact, for 1 year from the date of each
23 chemical treatment. The records shall be made available to the
24 department upon request. Each chemical treatment under
25 subsection (1) shall be posted as described in section 3310(d).

26 Sec. 3305. (1) A pesticide shall not be used in waters of
27 the state for aquatic nuisance control unless it is registered

1 with the EPA, pursuant to section 3 of the federal insecticide,
2 fungicide, and rodenticide act, 7 USC 136a, and the Michigan
3 department of agriculture, pursuant to section 8307, for the
4 aquatic nuisance control activity for which it is used.

5 (2) The department may conduct evaluations of the impacts and
6 effectiveness for any chemicals that are proposed for use for
7 aquatic nuisance control in waters of the state. This may
8 include the issuance of permits for field assessments of the
9 chemicals.

10 (3) The director, in consultation with the director of the
11 Michigan department of agriculture, may issue an order to
12 prohibit or suspend the use of a chemical for aquatic nuisance
13 control if, based on substantial scientific evidence, use of the
14 chemical causes unacceptable negative impacts to human health or
15 the environment. The department shall not issue permits
16 authorizing the use of such chemicals. In addition, a person
17 shall cease the use of such chemicals upon notification by the
18 department.

19 Sec. 3306. (1) An applicant shall file an application for a
20 permit or a certificate of coverage for chemical treatment for
21 aquatic nuisance control with the department on a form provided
22 by the department. Subject to section 3307, an application shall
23 include only all of the following information:

24 (a) The active ingredient or chemical trade name, and
25 proposed application rate for each chemical proposed for use.

26 (b) A map or maps, to scale, of the waterbody which clearly
27 delineate the proposed area of impact for each chemical type.

(c) The name, address or lot number, and telephone number for all bottomland owners whose property is in the proposed area of impact, except as follows:

(i) If the proposed area of impact is to involve the property of 5 or more bottomland owners, contact information is required for 5 persons who will know the date of treatment, the chemicals used, and the area of impact for each chemical treatment.

(ii) If an applicant has an emergency notification procedure, contact information is required for 1 person who will know the date of treatment, the chemicals used, and the area of impact for each chemical treatment.

(iii) If an applicant has contracted with a person to provide chemical treatment of aquatic nuisances and that person has an emergency notification procedure, the applicant shall identify the person and provide a copy of the contract.

(2) Until October 1, 2008, an application for a certificate of coverage under a general permit shall be accompanied by a fee of \$75.00. Until October 1, 2008, subject to subsection (4), an application for a permit under this section for any other control work shall be accompanied by the following fee, based on the size of the area of impact:

(a) Less than 1/2 acre, \$75.00.

(b) One-half acre or more but less than 5 acres, \$200.00.

(c) Five acres or more but less than 20 acres, \$400.00.

(d) Twenty acres or more but less than 100 acres, \$800.00.

(e) One hundred acres or more, \$1,500.00.

(3) An applicant may apply for an annual permit or for a

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1 5-year permit. However, if the area of impact is a whole lake,
2 an applicant may only apply for an annual permit. The
3 application fee for a 5-year permit shall be paid in
4 installments. The first installment shall be submitted with the
5 application and shall equal the fee for an annual permit.
6 Subsequent installments shall each equal 50% of the original
7 installment and shall be due on the first, second, third, and
8 fourth anniversaries of the effective date of the permit. [If an
installment is not paid when due, the permit is suspended until the
installment is paid. The suspension of the permit does not result in an
extension of the 5-year term of the permit.]

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

12 Sec. 3307. (1) An applicant shall provide a lake management
13 plan as part of an application for permit, if a whole lake
14 treatment is proposed.

15 (2) The department may require an applicant to provide a lake
16 management plan as part of an application for a permit for
17 treatments evaluating the effectiveness of a new pesticide or for
18 treatments where threatened or endangered [habitats or species on a list
of endangered or threatened species referred to in section 36505,] are
19 present, or based on the extent of bottomlands owned by public
20 institutions. The department shall notify potential applicants
21 at least 1 year in advance of requiring a lake management plan.
22 At a minimum, notification shall be posted on the department
23 internet website and shall be published in pertinent department
24 publications.

25 (3) A lake management plan shall be prepared using a form
26 supplied by the department and shall include only all of the
27 following:

1 (a) All of the following information concerning the physical
2 characteristics of the waterbody:

3 (i) Location.

4 (ii) Size.

5 (iii) Maximum depth.

6 (iv) Mean depth.

7 (v) Size of littoral zone.

8 (vi) Shoreline length.

9 (vii) Retention time.

10 (viii) Location map.

11 (ix) Bathymetric map, including all of the following:

12 (A) Tributaries.

13 (B) Outlets.

14 (C) Public and private access sites.

15 (D) Public land.

16 (E) Critical fish spawning areas and nursery areas.

17 (F) Wetlands.

18 (G) Special habitats.

19 (H) Parks.

20 (I) Water control structures.

21 (b) A description of the water quality limited to
22 transparency, as determined by Secchi disk, and, if the applicant
23 proposes whole lake chemical treatment for the control of
24 phytoplankton, total nitrogen and total phosphorus levels.

25 (c) All of the following information concerning the
26 biological characteristics of the waterbody:

27 (i) Aquatic vegetation maps and data analysis.

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1 (ii) Total higher aquatic plant surface coverage.

2 (iii) A description of the fish, wildlife, and plant
3 communities, including identification of any [species of special concern
4 or species on a list of endangered or threatened species referred to in
section 36505.]

5 (d) Land use activities including a description of the land
6 use and a land use map.

7 (e) History of waterbody management.

8 (f) Documentation of opportunities for involvement in plan
9 development by agencies responsible for managing public trust
10 resources and other interested persons, including a description
11 of all input obtained.

12 (g) A vegetation management plan that includes a description
13 of the aquatic nuisance problem, management goals, management
14 goal maps, management options, proposed actions necessary to
15 attain the management goals, a management timeline, and
16 monitoring and evaluation processes.

17 (h) A 3-year invasive species management plan.

18 (i) The appropriate pesticide application rate based on all
19 of the following:

20 (i) Management history.

21 (ii) Plant susceptibility.

22 (iii) Thermal stratification.

23 (iv) Hydrology.

24 Sec. 3308. (1) The department shall either approve or deny
25 an application for a certificate of coverage within 15 days after
26 receipt of the application. If the department denies an
27 application for a certificate of coverage, the department shall

1 notify the applicant, in writing, of the reasons for the denial
2 subject to section 3311.

3 (2) An application for a permit shall be considered to be
4 approved if the department fails to deny the application or
5 approve the application and issue the permit within 30 days after
6 the application is received and if all of the following apply:

7 (a) The proposed chemical treatment is consistent with the
8 product labeling.

9 (b) A permit was issued in the preceding year for chemical
10 treatment of the same waterbody and the scope of the proposed
11 chemical treatment is not greater than that approved in the
12 preceding year's permit.

13 (c) A whole lake treatment is not proposed.

14 (3) If the department denies the application in whole or
15 part, the department shall notify the applicant, in writing, of
16 the reasons for the denial, subject to section 3311, within 30
17 days after the application is received.

18 (4) An applicant shall obtain authorization to chemically
19 treat the proposed area of impact by obtaining written permission
20 from each person who owns bottomlands in the area of impact. The
21 applicant shall maintain the written permission for 1 year from
22 the expiration date of the permit and shall make the records
23 available to the department upon request. Written permission
24 from each bottomland owner is not required if the applicant is
25 providing, or has contracted to provide, chemical treatment for
26 either of the following:

27 (a) A lake board established under part 309.

1 (b) This state or a local unit of government acting under
2 authority of state law to conduct lake improvement projects or to
3 control aquatic vegetation.

4 Sec. 3309. (1) A permit for chemical treatment of aquatic
5 nuisances shall, at a minimum, including all of the following
6 information:

7 (a) The active ingredient or the trade name of each chemical
8 to be applied.

9 (b) The application rate of each chemical.

10 (c) The maximum amount of each chemical to be applied per
11 treatment.

12 (d) Minimum length of time between treatments for each
13 chemical.

14 (e) A map or maps that clearly delineate the approved area
15 of impact.

16 (2) The department may impose additional conditions on a
17 permit to protect the natural resources or the public health; to
18 prevent economic loss, recreational damage, and unacceptable
19 negative impacts to nontarget organisms; and to prevent a failure
20 to provide control of the aquatic nuisance.

21 (3) The department may issue general permits and
22 certificates of coverage under those permits.

23 Sec. 3310. As a condition of a permit, the department may
24 require the permittee to do any of the following:

25 (a) Notify the department not less than 2 working days in
26 advance of chemical treatment.

27 (b) Proceed with chemical treatment only if a department

1 representative is present.

2 (c) Allow the department or its representative to collect a
3 sample of the chemical or chemicals used before or during any
4 chemical treatment.

5 (d) Post the area of impact before chemical treatment as
6 follows:

7 (i) Signs shall be of a brilliant color and made of sturdy,
8 weather-resistant material. Minimum sign dimensions shall be 5
9 inches high by 8 inches wide.

10 (ii) Signs shall be placed in the following locations unless
11 prohibited by the property owner or his or her representative:

12 (A) Signs shall be posted along the shoreline of the area of
13 impact not more than 100 feet apart. Signs shall also be posted
14 in riparian lands adjacent to that portion of the shoreline.

15 (B) For an area of impact of 2 or more acres, signs shall be
16 posted at all access sites, boat launching areas, and private and
17 public parks located on the waterbody in conspicuous locations,
18 such as at the entrances, boat ramps, and bulletin boards, if
19 permitted by managers or owners. If the access sites, launching
20 areas, and parks are not to be treated or are not adjacent to the
21 area of impact, then the signs shall clearly indicate the
22 location of the area of impact and shall contain the other
23 information specified in subparagraph (iii).

24 (iii) At a minimum, posting signs shall include all of the
25 following information:

26 (A) The permit number.

27 (B) The name of the waterbody.

1 (C) The date of treatment.

2 (D) The name, address, and telephone number of the person
3 conducting the treatment.

4 (E) The name of the chemical or chemicals used and the
5 restrictions on the use of treated water pursuant to the
6 EPA-approved product label.

7 (F) The expiration date of water use restrictions for the
8 chemical with the longest restriction.

9 (G) The phrase "do not remove posting signs or maps until all
10 water use restrictions have expired".

11 (e) Publish a notice in a local newspaper or make an
12 announcement on a local radio station regarding the chemical
13 treatment. The notice or announcement shall include all of the
14 following information:

15 (i) The permit number.

16 (ii) The name of the waterbody.

17 (iii) A list of the chemicals to be used with corresponding
18 water use restrictions.

19 (iv) A description of the area of impact.

20 (v) The proposed treatment dates.

21 (f) Apply chemicals so that swimming restrictions and fish
22 consumption restrictions are not imposed on any Saturday, Sunday,
23 or state-declared holiday.

24 (g) Take special precautions to avoid or minimize potential
25 impacts to human health, the environment, and nontarget
26 organisms.

27 (h) Notify, in writing, an owner of any waterfront property

1 within 100 feet of the area of impact, not less than 7 days, and
2 not more than 45 days, before the initial chemical treatment.
3 However, if the owner is not the occupant of the waterfront
4 property or the dwelling located on the property, then the owner
5 is responsible for notifying the occupant. Written notification
6 shall include all of the following information:

7 (i) Name, address, and telephone number of the permittee.

8 (ii) A list of chemicals proposed for use with corresponding
9 water use restrictions.

10 (iii) Approximate treatment dates, without specifying which
11 chemical is to be used on each date.

12 (i) Complete and return the treatment report form provided by
13 the department for each treatment season.

14 (j) Perform lake water residue analysis to verify the
15 chemical concentrations in the waterbody according to a
16 frequency, timing, and methodology approved by the department.

17 (k) Perform aquatic vegetation surveys according to a
18 frequency, timing, and methodology that has been approved by the
19 department prior to submittal of a permit application.

20 (l) Use chemical control methods for nuisance aquatic
21 vegetation that are consistent with the approved vegetation
22 management plan submitted separately or as part of a lake
23 management plan. The department may approve modifications to the
24 vegetation management plan upon receipt of a written request from
25 the permittee that includes supporting documentation.

26 (m) Perform pretreatment monitoring of the target plant
27 population according to a frequency, timing, and methodology that

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1 has been approved by the department before submittal of a permit
2 application.

3 Sec. 3311. (1) Subject to subsection (3), the department
4 shall deny an application for a permit, or a part of a permit
5 application, only under 1 or more of the following
6 circumstances:

7 (a) The proposed use of a pesticide is inconsistent with its
8 label pursuant to FIFRA.

9 (b) The proposed use of a pesticide is not registered by the
10 Michigan department of agriculture pursuant to part 83 and the
11 EPA pursuant to FIFRA.

12 (c) The proposed use of a chemical, though in accordance with
13 the label and otherwise in compliance with this part, is likely
14 to result in economic loss, recreational damage, a public health
15 hazard, or failure to provide control of the aquatic nuisance, as
16 determined by the department.

17 (d) An application for chemical treatment of higher aquatic
18 plants is postmarked after August 15 in the year for which
19 treatment is proposed.

[(e) The proposed use of a pesticide will adversely affect a species
on a list of endangered or threatened species referred to in section
36505.]

20 (2) Subject to subsection (3), the department shall deny an
21 application for a certificate of coverage under a general permit
22 if the proposed project does not meet the requirements for the
23 general permit under which the application is made.

24 (3) The department shall deny an application for a permit or
25 certificate of coverage for chemical treatment of a waterbody if
26 the applicant has been convicted of 2 or more violations of other
27 permits under this part for that waterbody within 1 calendar

1 year.

2 Sec. 3312. The department may revoke a permit or
3 certificate of coverage for 1 or more of the following reasons:

4 (a) The department determines, through information not
5 available to the department at the time of permit issuance, that
6 the use of a chemical, although otherwise in accordance with the
7 label and this part, is likely to result in economic loss,
8 recreational damage, a public health hazard, or failure to
9 provide control of the aquatic nuisance, as determined by the
10 department.

11 (b) The permittee failed to comply with any condition of a
12 permit or with this part.

13 (c) The permittee obtained a permit or certificate of
14 coverage by misrepresentation or failure to fully disclose
15 relevant facts.

16 Sec. 3313. The department may make minor revisions to a
17 permit, based on minimizing the impacts to the natural resources,
18 public health, and safety, or to improve aquatic nuisance
19 control, if the proposed revisions do not involve a change in the
20 scope of the project, and the permittee requests the revisions in
21 writing. The request shall include all of the following
22 information:

23 (a) The proposed changes to the permit.

24 (b) An explanation of the necessity for the proposed
25 changes.

26 (c) Maps that clearly delineate any proposed changes to the
27 area of impact.

1 (d) Additional information that would help the department
2 reach a decision on a permit amendment.

3 Sec. 3314. The department may promulgate rules to implement
4 this part. The rules shall not regulate the use of a specific
5 chemical or class of chemicals.

6 Sec. 3315. A person aggrieved by an order issued pursuant
7 to this part or section 8329 as it relates to this part, an
8 applicant for or holder of a permit or certificate of coverage
9 aggrieved by the denial or revocation of a permit or certificate
10 of coverage, or a permittee aggrieved by a condition in a permit
11 is entitled to a contested case hearing pursuant to the
12 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
13 24.328.

14 Sec. 3316. A person who violates this part is subject to
15 applicable sanctions under part 83.

16 Sec. 3317. The commission of agriculture and the director
17 of the department of agriculture shall enter into a memorandum of
18 understanding with the director of the department of
19 environmental quality. The investigation and resolution of
20 violations of this part shall be conducted in accordance with the
21 memorandum of understanding. The memorandum of understanding
22 shall provide for both of the following:

23 (a) That the department of environmental quality and the
24 department of agriculture shall provide notice to each other of
25 suspected violations of this part.

26 (b) Any other matters relevant to the investigation and
27 resolution of violations of this part that the parties to the

1 memorandum of understanding consider advisable.

2 Sec. 30113. (1) The land and water management permit fee
3 fund is created within the state treasury.

4 (2) The state treasurer may receive money or other assets
5 from any source for deposit into the fund. The state treasurer
6 shall direct the investment of the fund. The state treasurer
7 shall credit to the fund interest and earnings from fund
8 investments. The state treasurer shall annually present to the
9 department an accounting of the amount of money in the fund.

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

12 (4) The department shall expend money from the fund, upon
13 appropriation, only to implement this part and the following:

14 (a) Sections 3104, 3107, and 3108.

15 ~~(b) Part 325.~~

16 ~~(c) Part 303.~~

17 ~~(d) Section 12562 of the public health code, Act No. 368 of~~
18 ~~the Public Acts of 1978, being section 333.12562 of the Michigan~~
19 ~~Compiled Laws.~~

20 (b) Part 33.

21 (c) Part 303.

22 (d) Part 315.

23 (e) Part 323.

24 (f) Part 325.

25 (g) Part 353.

26 (h) ~~-(f)-~~ Section 117 of the ~~subdivision control act of~~
27 ~~1967, Act No. 288 of the Public Acts of 1967, being~~

1 ~~section 560.117 of the Michigan Compiled Laws~~ **land division act,**
2 **1967 PA 288, MCL 560.117.**

3 ~~(g) Part 315.~~

4 ~~(h) Part 353.~~

5 (5) The department shall process permit applications for
6 ~~the~~ **those** acts and parts of acts cited in subsection (4) **under**
7 **which permits are issued** within 60 days after receiving a
8 completed permit application unless the act or part specifically
9 provides for permit application processing time limits.

10 (6) The department shall annually report to the legislature
11 on both of the following:

12 (a) How money in the fund was expended during the previous
13 fiscal year.

14 (b) For permit programs funded with money in the fund, the
15 average length of time for department action on permit
16 applications for each class of permits reviewed.

17 Enacting section 1. Sections 12561, 12562, and 12563 of the
18 public health code, 1978 PA 368, MCL 333.12561, 333.12562, and
19 333.12563, are repealed.

20 Enacting section 2. This amendatory act does not take
21 effect unless House Bill No. 4729 of the 92nd Legislature is
22 enacted into law.