

HOUSE SUBSTITUTE FOR

SENATE BILL NO. 252

(As amended October 14, 2003)

[A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 3103, 3112, 3113, 3115, 3118, and 3119 (MCL
324.3103, 324.3112, 324.3113, 324.3115, 324.3118, and 324.3119),
section 3118 as amended by 1999 PA 35 and section 3119 as amended
by 1999 PA 106, and by adding sections 3120 and 3121.]

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3103. (1) The department shall protect and conserve
2 the water resources of the state and shall have control of the
3 pollution of surface or underground waters of the state and the
4 Great Lakes, which are or may be affected by waste disposal of
5 any person. The department may make or cause to be made surveys,
6 studies, and investigations of the uses of waters of the state,
7 both surface and underground, and cooperate with other

1 governments and governmental units and agencies in making the
2 surveys, studies, and investigations. The department shall
3 assist in an advisory capacity a flood control district that may
4 be authorized by the legislature. The department, in the public
5 interest, shall appear and present evidence, reports, and other
6 testimony during the hearings involving the creation and
7 organization of flood control districts. The department shall
8 advise and consult with the legislature on the obligation of the
9 state to participate in the costs of construction and maintenance
10 as provided for in the official plans of a flood control district
11 or intercounty drainage district.

12 (2) The department shall enforce this part and shall
13 promulgate rules as it considers necessary to carry out its
14 duties under this part. **However, notwithstanding any**
15 **rule-promulgation authority that is provided in this part,**
16 **beginning on the effective date of the amendatory act that**
17 **amended this section, the department shall not promulgate any**
18 **additional rules unless specific rule-making authority is**
19 **authorized by law.**

20 (3) ~~—(2)—The~~ **Subject to subsection (2), the** department may
21 promulgate rules and take other actions as may be necessary to
22 comply with the federal water pollution control act, chapter 758,
23 86 Stat. 816, 33 U.S.C. 1251 to 1252, 1253 to 1254, 1255 to 1257,
24 1258 to 1270, 1281, 1282 to 1293, 1294 to 1299, 1311 to 1313,
25 1314 to 1330, 1341 to 1345, 1361 to 1377, and 1381 to 1387, and
26 to expend funds available under such law for extension or
27 improvement of the state or interstate program for prevention and

1 control of water pollution. This part shall not be construed as
2 authorizing the department to expend or to incur any obligation
3 to expend any state funds for such purpose in excess of any
4 amount that is appropriated by the legislature.

5 Sec. 3112. (1) A person shall not discharge any waste or
6 waste effluent into the waters of this state unless the person is
7 in possession of a valid permit from the department. ~~Compliance~~
8 ~~with the terms of an outstanding order of determination or final~~
9 ~~order of determination or stipulation with the former water~~
10 ~~resources commission that is in effect on April 15, 1973, shall~~
11 ~~be considered to meet the requirements of this section until the~~
12 ~~department issues its permit.~~

13 (2) An application for a permit under subsection (1) shall be
14 submitted to the department. Within 30 days after an application
15 for a new or increased use is received, the department shall
16 determine whether the application is administratively complete.
17 Within 90 days after an application for reissuance of a permit is
18 received, the department shall determine whether the application
19 is administratively complete. If the department determines that
20 an application is not complete, the department shall notify the
21 applicant in writing within the applicable time period. If the
22 department does not make a determination as to whether the
23 application is complete within the applicable time period, the
24 application shall be considered to be complete.

25 (3) The department shall condition the continued validity of
26 a permit upon the permittee's meeting the effluent requirements
27 that the department considers necessary to prevent unlawful

1 pollution by the dates that the department considers to be
2 reasonable and necessary and to assure compliance with applicable
3 federal law and regulations. If the department finds that the
4 terms of a permit have been, are being, or may be violated, it
5 may modify, suspend, or revoke the permit or grant the permittee
6 a reasonable period of time in which to comply with the permit.
7 The department may reissue a revoked permit upon a showing
8 satisfactory to the department that the permittee has corrected
9 the violation. A person who has had a permit revoked may apply
10 for a new permit.

11 (4) ~~-(2)-~~ If the department determines that a person is
12 causing or is about to cause unlawful pollution of the waters of
13 this state, the department may notify the alleged offender of its
14 determination and enter an order requiring the person to abate
15 the pollution or refer the matter to the attorney general for
16 legal action, or both.

17 (5) ~~-(3)-~~ A person who is aggrieved by an order of abatement
18 of the department or by the reissuance, modification, suspension,
19 or revocation of an existing permit of the department executed
20 pursuant to this section may file a sworn petition with the
21 ~~commission~~ **department** setting forth the grounds and reasons for
22 the complaint and asking for a contested case hearing on the
23 matter pursuant to the administrative procedures act of 1969,
24 ~~Act No. 306 of the Public Acts of 1969, being sections 24.201 to~~
25 ~~24.328 of the Michigan Compiled Laws~~ **1969 PA 306, MCL 24.201 to**
26 **24.328.** A petition filed more than 60 days after action on the
27 order or permit may be rejected by the ~~commission~~ **department** as

1 being untimely.

2 Sec. 3113. (1) A person who seeks a new or increased use of
3 the waters of the state for sewage or other waste disposal
4 purposes shall file with the department an application setting
5 forth the information required by the department, including the
6 nature of the enterprise or development contemplated, the amount
7 of water required to be used, its source, the proposed point of
8 discharge of the wastes into the waters of the state, the
9 estimated amount to be discharged, and a statement setting forth
10 the expected bacterial, physical, chemical, and other known
11 characteristics of the wastes.

12 (2) ~~Within 180 days after receipt of a complete application,~~
13 ~~the department shall either grant or deny a permit, unless the~~
14 ~~applicant and the department agree to extend this time period.~~
15 If a permit is granted, the department shall condition the permit
16 upon such restrictions that the department considers necessary to
17 adequately guard against unlawful uses of the waters of the state
18 as are set forth in section 3109.

19 (3) If the permit or denial of a new or increased use is not
20 acceptable to the permittee, the applicant, or any other person,
21 the permittee, the applicant, or other person may file a sworn
22 petition with the department setting forth the grounds and
23 reasons for the complaint and asking for a contested case hearing
24 on the matter pursuant to the administrative procedures act of
25 1969, ~~Act No. 306 of the Public Acts of 1969, being sections~~
26 ~~24.201 to 24.328 of the Michigan Compiled Laws~~ **1969 PA 306, MCL**
27 **24.201 to 24.328.** A petition filed more than 60 days after

1 action on the permit application may be rejected by the
2 ~~commission~~ **department** as being untimely.

3 Sec. 3115. (1) The department may request the attorney
4 general to commence a civil action for appropriate relief,
5 including a permanent or temporary injunction, for a violation of
6 this part or a provision of a permit, order, rule, or stipulation
7 of the department. An action under this subsection may be
8 brought in the circuit court for the county of Ingham or for the
9 county in which the defendant is located, resides, or is doing
10 business. **The defendant may request within 21 days and the court**
11 **shall grant a change of venue to the circuit court for the county**
12 **of Ingham or for the county in which the alleged violation**
13 **occurred, is occurring, or will occur.** The court has jurisdiction
14 to restrain the violation and to require compliance. In addition
15 to any other relief granted under this subsection, the court
16 shall impose a civil fine of not less than \$2,500.00 and may
17 award reasonable attorney fees and costs to the prevailing
18 party. However, the maximum fine imposed by the court shall be
19 not more than \$25,000.00 per day of violation.

20 (2) A person who at the time of the violation knew or should
21 have known that he or she discharged a substance contrary to this
22 part, or contrary to a permit, order, rule, or stipulation of the
23 department, or who intentionally makes a false statement,
24 representation, or certification in an application for or form
25 pertaining to a permit or in a notice or report required by the
26 terms and conditions of an issued permit, or who intentionally
27 renders inaccurate a monitoring device or record required to be

1 maintained by the department, is guilty of a felony and shall be
2 fined not less than \$2,500.00 or more than \$25,000.00 for each
3 violation. The court may impose an additional fine of not more
4 than \$25,000.00 for each day during which the unlawful discharge
5 occurred. If the conviction is for a violation committed after a
6 first conviction of the person under this subsection, the court
7 shall impose a fine of not less than \$25,000.00 per day and not
8 more than \$50,000.00 per day of violation. Upon conviction, in
9 addition to a fine, the court in its discretion may sentence the
10 defendant to imprisonment for not more than 2 years or impose
11 probation upon a person for a violation of this part. With the
12 exception of the issuance of criminal complaints, issuance of
13 warrants, and the holding of an arraignment, the circuit court
14 for the county in which the violation occurred has exclusive
15 jurisdiction. However, the person shall not be subject to the
16 penalties of this subsection if the discharge of the effluent is
17 in conformance with and obedient to a rule, order, or permit of
18 the department. In addition to a fine, the attorney general may
19 file a civil suit in a court of competent jurisdiction to recover
20 the full value of the injuries done to the natural resources of
21 the state and the costs of surveillance and enforcement by the
22 state resulting from the violation.

23 (3) Upon a finding by the court that the actions of a civil
24 defendant pose or posed a substantial endangerment to the public
25 health, safety, or welfare, the court shall impose, in addition
26 to the penalties set forth in subsection (1), a fine of not less
27 than \$500,000.00 and not more than \$5,000,000.00.

1 (4) Upon a finding by the court that the actions of a
2 criminal defendant pose or posed a substantial endangerment to
3 the public health, safety, or welfare, the court shall impose, in
4 addition to the penalties set forth in subsection (2), a fine of
5 not less than \$1,000,000.00 and, in addition to a fine, a
6 sentence of 5 years' imprisonment.

7 (5) To find a defendant civilly or criminally liable for
8 substantial endangerment under subsections (3) and (4), the court
9 shall determine that the defendant knowingly or recklessly acted
10 in such a manner as to cause a danger of death or serious bodily
11 injury and that either of the following occurred:

12 (a) The defendant had an actual awareness, belief, or
13 understanding that his or her conduct would cause a substantial
14 danger of death or serious bodily injury.

15 (b) The defendant acted in gross disregard of the standard of
16 care that any reasonable person should observe in similar
17 circumstances.

18 (6) Knowledge possessed by a person other than the defendant
19 under subsection (5) may be attributable to the defendant if the
20 defendant took affirmative steps to shield himself or herself
21 from the relevant information.

22 (7) ~~Any~~ **A civil** fine or other award ordered paid pursuant
23 to this section shall do both of the following:

24 (a) Be payable to the state of Michigan and credited to the
25 general fund.

26 (b) Constitute a lien on any property, of any nature or kind,
27 owned by the defendant.

1 (8) A lien under subsection (7)(b) shall take effect and have
 2 priority over all other liens and encumbrances except those filed
 3 or recorded prior to the date of judgment only if notice of the
 4 lien is filed or recorded as required by state or federal law.

5 (9) A lien filed or recorded pursuant to subsection (8) shall
 6 be terminated according to the procedures required by state or
 7 federal law within 14 days after the fine or other award ordered
 8 to be paid is paid.

9 (10) In addition to any other method of collection, any fine
 10 or other award ordered paid may be recovered by right of setoff
 11 to any debt owed to the defendant by the state of Michigan,
 12 including the right to a refund of income taxes paid.

13 Sec. 3118. (1) Until October 1, ~~2003~~ **2008**, the department
 14 shall collect storm water discharge fees from persons who apply
 15 for or have been issued storm water discharge permits as
 16 follows:

17 (a) ~~The~~ **A 1-time fee of \$400.00 is required** for a permit
 18 related solely to a site of construction activity ~~is a 1-time~~
 19 ~~fee of \$125.00 per~~ **for each** permitted site. The fee shall be
 20 submitted by the permit applicant with his or her application for
 21 ~~a general or~~ **an individual permit or for a certificate of**
 22 **coverage under a general permit.** ~~If rules promulgated under~~
 23 ~~this part provide for~~ **For** a permit by rule, the fee shall be
 24 submitted by the construction **site** permittee along with his or
 25 her notice of coverage. A person needing more than 1 permit may
 26 submit a single payment for more than 1 permit and receive
 27 appropriate credit. Payment of the fee under this subdivision or

1 verification of prepayment is a necessary part of a valid permit
2 application or notice of coverage under a permit by rule.

3 (b) ~~The fee for a permit not related solely to a site of~~
4 ~~construction activity is \$200.00. For each fiscal year, a person~~
5 ~~possessing a permit not related solely to a site of construction~~
6 ~~activity as of January 1 of that fiscal year shall be assessed~~
7 ~~the fee. The department shall notify those persons of their fee~~
8 ~~assessments by February 1 of that fiscal year. Payment shall be~~
9 ~~postmarked no later than March 15 of that fiscal year. An annual~~
10 ~~fee of \$260.00 is required for a permit related solely to a storm~~
11 ~~water discharge associated with industrial activity or from a~~
12 ~~commercial site for which the department determines a permit is~~
13 ~~needed.~~

14 (c) An annual fee of \$500.00 is required for a permit for a
15 municipal separate storm sewer system, unless the permit is
16 issued to a city, a village, a township, or a county or is a
17 single permit authorization for municipal separate storm sewer
18 systems in multiple locations statewide.

19 (d) An annual fee for a permit for a municipal separate storm
20 sewer system issued to a city, village, or township shall be
21 determined by its population in an urbanized area as defined by
22 the United States bureau of the census. The fee shall be based
23 on the latest available decennial census as follows:

24 (i) For a population of 1,000 people or fewer, the annual fee
25 is \$500.00.

26 (ii) For a population of more than 1,000 people, but fewer
27 than 3,001 people, the annual fee is \$1,000.00.

1 (iii) For a population of more than 3,000 people, but fewer
2 than 10,001 people, the annual fee is \$2,000.00.

3 (iv) For a population of more than 10,000 people, but fewer
4 than 30,001 people, the annual fee is \$3,000.00.

5 (v) For a population of more than 30,000 people, but fewer
6 than 50,001 people, the annual fee is \$4,000.00.

7 (vi) For a population of more than 50,000 people, but fewer
8 than 75,001 people, the annual fee is \$5,000.00.

9 (vii) For a population of more than 75,000 people, but fewer
10 than 100,001 people, the annual fee is \$6,000.00.

11 (viii) For a population of more than 100,000 people, the
12 annual fee is \$7,000.00.

13 (e) An annual fee of \$3,000.00 is required for a permit for a
14 municipal separate storm sewer system issued to a county.

15 (f) An annual fee for a single municipal separate storm sewer
16 systems permit authorizing a state or federal agency to operate
17 municipal separate storm sewer systems in multiple locations
18 statewide shall be determined in accordance with a memorandum of
19 understanding between that state or federal agency and the
20 department and shall be based on the projected needs by the
21 department to administer the permit.

22 (2) The permit fees identified in subsection (1) are
23 nonrefundable.

24 (3) A person possessing a permit not related solely to a site
25 of construction activity as of January 1 shall be assessed a
26 fee. The department shall notify those persons of their fee
27 assessments by February 1. Payment shall be postmarked no later

1 than March 15. Failure by the department to send a fee
2 assessment notification by the deadline, or failure of a person
3 to receive a fee assessment notification, does not relieve that
4 person of his or her obligation to pay the fee. If the
5 department does not meet the February deadline for sending the
6 fee assessment, the fee assessment is due not later than 45 days
7 after receiving a fee notification.

8 (4) If a storm water permit is issued for a drainage
9 district, the drainage district is responsible for the applicable
10 fee under this section.

11 (5) ~~-(2)-~~ The department shall assess interest on all fee
12 payments submitted under this section after the due date. The
13 permittee shall pay an additional amount equal to 0.75% of the
14 payment due for each month or portion of a month the payment
15 remains past due.

16 (6) ~~-(3)-~~ The department shall forward all fees **and interest**
17 **payments** collected under this section to the state treasurer for
18 deposit into the fund.

19 (7) ~~-(4)-~~ The department shall make payment of the required
20 fee assessed under this section a condition of **issuance or**
21 **reissuance of** a permit not related solely to a site of
22 construction activity. ~~at the time of permit issuance or~~
23 ~~reissuance.~~

24 ~~-(5) If a person fails to pay the fee required under this~~
25 ~~section in full, plus any interest accrued, by October 1 of the~~
26 ~~year following the date of notification of the fee assessment,~~
27 ~~the department may revoke the permit held by that person. The~~

1 ~~failure by a person to pay a fee imposed by this section is a~~
2 ~~violation of this part and subjects that person to the penalty~~
3 ~~provisions in section 3115.~~

4 ~~—— (6) Within 1 year after the reauthorization of the clean~~
5 ~~water act, the department shall convene a committee to review the~~
6 ~~storm water discharge fee system provided in this section. The~~
7 ~~committee shall be composed of a member of the department and~~
8 ~~representatives of groups affected by the storm water discharge~~
9 ~~fee. The committee shall make recommendations for changes in the~~
10 ~~fee system to the department and to the chairpersons of the house~~
11 ~~and senate appropriations committees.~~

12 (8) In addition to any other penalty provided in this part,
13 if a person fails to pay the fee required under this section by
14 its due date, the person is in violation of this part and the
15 department may undertake enforcement actions as authorized under
16 this part.

17 (9) The attorney general may bring an action to collect
18 overdue fees and interest payments imposed under this section.

19 (10) If the permit is for a municipal separate storm sewer
20 system and the population served by that system is different than
21 the latest decennial census, the permittee may appeal the annual
22 fee determination and submit written verification of actual
23 population served by the municipal separate storm sewer system.

24 (11) A person who wishes to appeal either a fee or a penalty
25 assessed under this section is limited to an administrative
26 appeal, in accordance with section 631 of the revised judicature
27 act of 1961, 1961 PA 236, MCL 600.631. The appeal shall be filed

1 within 30 days of the department's fee notification under
2 subsection (3).

3 (12) ~~—(7)—~~ As used in this section and section 3119:

4 (a) "Certificate of coverage" means a document issued by the
5 department that authorizes a discharge under a general permit.

6 (b) ~~—(a)—~~ "Clean water act" means the federal water pollution
7 control act, chapter 758, 86 Stat. 816, 33 U.S.C. 1251 to 1252,
8 1253 to 1254, 1255 to 1257, 1258 to 1263, 1265 to 1270, **1273 to**
9 **1274**, 1281, 1282 to 1293, 1294 to ~~—1299—~~ **1301**, 1311 to 1313, 1314
10 to 1330, 1341 to ~~—1345—~~ **1346**, 1361 to **1375**, **1376 to** 1377, and
11 1381 to 1387.

12 (c) ~~—(b)—~~ "Construction activity" means a human-made earth
13 change or disturbance in the existing cover or topography of land
14 that is 5 acres or more in size, for which a national permit is
15 required pursuant to 40 C.F.R. 122.26(a), and which is described
16 as a construction activity in 40 C.F.R. 122.26(b)(14)(x).
17 Construction activity includes clearing, grading, and excavating
18 activities. Construction activity does not include the practice
19 of clearing, plowing, tilling soil, and harvesting for the
20 purpose of crop production.

21 (d) ~~—(c)—~~ "Fee" means a storm water discharge fee authorized
22 under this section.

23 ~~—(d)— "Fiscal year" means the state fiscal year beginning~~
24 ~~October 1 and ending September 30.~~

25 (e) "Fund" means the storm water fund created in section
26 3119.

27 (f) "General permit" means a permit issued authorizing a

1 category of similar discharges.

2 (g) "Individual permit" means a site-specific permit.

3 (h) "Municipal separate storm sewer system" means all
4 separate storm sewers that are owned or operated by the United
5 States or a state, city, village, township, county, district,
6 association, or other public body created by or pursuant to state
7 law, having jurisdiction over disposal of sewage, industrial
8 wastes, storm water, or other wastes, including special districts
9 under state law, such as a sewer district, flood control
10 district, or drainage district or similar entity, or a designated
11 or approved management agency under section 208 of the clean
12 water act, 33 U.S.C. 1288, that discharges to waters of the
13 state. Municipal separate storm sewer system includes systems
14 similar to separate storm sewer systems in municipalities, such
15 as systems at military bases, large hospital or prison complexes,
16 and highways and other thoroughfares. Municipal separate storm
17 sewer system does not include separate storm sewers in very
18 discrete areas, such as individual buildings.

19 (i) "Notice of coverage" means a notice that a person
20 engaging in construction activity agrees to comply with a permit
21 by rule for that activity.

22 (j) ~~-(f)-~~ "Permit" or "storm water discharge permit" means a
23 permit authorizing the discharge of wastewater or any other
24 substance to surface waters of the state under the national
25 pollutant discharge elimination system, pursuant to the clean
26 water act or this part and the rules and regulations promulgated
27 under that act or this part.

1 (k) "Public body" means the United States, the state of
2 Michigan, a city, village, township, county, school district,
3 public college or university, or single purpose governmental
4 agency, or any other body which is created by federal or state
5 statute or law.

6 (l) "Separate storm sewer system" means a system of drainage,
7 including, but not limited to, roads, catch basins, curbs,
8 gutters, parking lots, ditches, conduits, pumping devices, or
9 man-made channels, which has the following characteristics:

10 (i) The system is not a combined sewer where storm water
11 mixes with sanitary wastes.

12 (ii) The system is not part of a publicly owned treatment
13 works.

14 (m) ~~-(g)-~~ "Storm water" means storm water runoff, snowmelt
15 runoff, and surface runoff and drainage.

16 (n) "Storm water discharge associated with industrial
17 activity" means a point source discharge of storm water from a
18 facility which is defined as an industrial activity under 40
19 C.F.R. 122.26(b)(14)(i-ix and xi).

20 Sec. 3119. (1) The storm water fund is created within the
21 state treasury.

22 (2) The state treasurer may receive money or other assets
23 from any source for deposit into the fund. The state treasurer
24 shall direct the investment of the fund. The state treasurer
25 shall credit to the fund interest and earnings from fund
26 investments.

27 (3) Money in the fund at the close of the fiscal year shall

1 remain in the fund and shall not lapse to the general fund.

2 (4) The department shall expend money from the fund, upon
3 appropriation, only for 1 or more of the following purposes:

4 (a) Review of storm water permit applications.

5 (b) Storm water permit development, issuance, reissuance,
6 modification, and termination.

7 (c) Surface water monitoring to support the storm water
8 permitting process.

9 (d) Assessment of compliance with storm water permit
10 conditions.

11 (e) Enforcement against storm water permit violations.

12 (f) Classification of storm water control facilities.

13 (g) Not more than 10% of the money in the fund for training
14 for certification of storm water operators and educational
15 material to assist persons regulated under this part.

16 **(h) Regional or statewide public education to enhance the**
17 **effectiveness of storm water permits.**

18 (5) Money in the fund shall not be used to support the direct
19 costs of litigation undertaken to enforce this part.

20 (6) Upon the expenditure or appropriation of money raised in
21 section 3118 for any other purpose than those specifically listed
22 in this section, authorization to collect fees under section 3118
23 shall be suspended until such time as the money expended or
24 appropriated for purposes other than those listed in this section
25 is returned to the fund.

26 **(7) By January 1, 2006 and by January 1 of each year**
27 **thereafter, the department shall prepare and submit to the**

1 governor, the legislature, the chairs of the standing committees
2 of the senate and house of representatives with primary
3 responsibility for issues related to natural resources and the
4 environment, and the chairs of the subcommittees of the senate
5 and house appropriations committees with primary responsibility
6 for appropriations to the department a report that details the
7 departmental activities of the previous fiscal year in
8 administering the department's storm water program that were
9 funded by the fund. This report shall include, at a minimum, all
10 of the following:

11 (a) The number of full-time equated positions performing each
12 of the following functions:

13 (i) Permit issuance and development.

14 (ii) Compliance.

15 (iii) Enforcement.

16 (b) The number of new permit applications received by the
17 department in the preceding year.

18 (c) The number of renewal permits in the preceding year.

19 (d) The number of permit modifications requested in the
20 preceding year.

21 (e) The number of staff hours dedicated to each of the fee
22 categories listed in section 3118.

23 (f) The number of permits issued for fee categories listed in
24 section 3118.

25 (g) The average number of days required for review of a
26 permit from the date the permit application is determined to be
27 administratively complete.

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1 (h) The number of permit applications denied.

2 (i) The number of permit applications withdrawn by the
3 applicant.

4 (j) The percentage and number of permit applications that
5 were reviewed for administrative completeness within 10 days of
6 receipt by the department.

7 (k) The percentage and number of permit applications
8 submitted to the department that were administratively complete
9 as received.

10 (l) The percentage and number of new permit applications for
11 which a final action was taken by the department within 180
12 days.

13 (m) The percentage and number of permit renewals and
14 modifications processed within the required time.

15 (n) The number of permits reopened by the department.

16 (o) The number of unfilled positions dedicated to the
17 department's storm water program.

18 (p) The amount of revenue in the fund at the end of the
19 fiscal year.

20 Sec. 3120. (1) Until October 1, 2008, [except as provided in
subsection (6),] an application for a

21 new permit, a reissuance of a permit, or a modification of an
22 existing permit under this part authorizing a discharge into
23 surface water, other than a storm water discharge, shall be
24 accompanied by an application fee as follows:

25 (a) For an EPA major facility permit, \$500.00.

26 (b) For an EPA minor facility individual permit, a CSO
27 permit, or a wastewater stabilization lagoon individual permit,

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1 \$300.00.

2 (c) For an EPA minor facility general permit, \$50.00.

3 (2) Within 180 days after receipt of a complete application
4 for a new or increased use permit, the department shall either
5 grant or deny the permit, unless the applicant and the department
6 agree to extend this time period.

7 (3) By September 30 of the year following the submittal of a
8 complete application for reissuance of a permit, the department
9 shall either grant or deny the permit, unless the applicant and
10 the department agree to extend this time period.

11 (4) If the department fails to make a decision on an
12 application within the applicable time period under subsection
13 (2) or (3), the department shall return to the applicant the
14 application fee submitted under subsection (1) and the applicant
15 shall not be subject to an application fee and shall receive a
16 15% annual discount on an annual permit fee required for a permit
17 issued based upon that application.

18 (5) Until October 1, 2008, [except as provided in subsection (6),] a
19 person who receives a permit
20 under this part authorizing a discharge into surface water, other
21 than a stormwater discharge, is subject to an annual permit fee
22 as follows:

23 (a) For an industrial or commercial facility that is an EPA
24 major facility, \$8,700.00.

25 (b) For an industrial or commercial facility that is an EPA
26 minor facility, the following amounts:

27 (i) For a general permit for a low-flow facility, \$150.00.

(ii) For a general permit for a high-flow facility, \$400.00.

- 1 (iii) For an individual permit for a low-flow facility,
2 \$1,650.00.
- 3 (iv) For an individual permit for a high-flow facility,
4 \$3,650.00.
- 5 (c) For a municipal facility that is an EPA major facility,
6 the following amounts:
- 7 (i) For an individual permit for a facility discharging 500
8 MGD or more, \$173,000.00.
- 9 (ii) For an individual permit for a facility discharging 50
10 MGD or more but less than 500 MGD, \$19,000.00.
- 11 (iii) For an individual permit for a facility discharging 10
12 MGD or more but less than 50 MGD, \$12,000.00.
- 13 (iv) For an individual permit for a facility discharging less
14 than 10 MGD, \$5,500.00.
- 15 (d) For a municipal facility that is an EPA minor facility,
16 the following amounts:
- 17 (i) For an individual permit for a facility discharging 10
18 MGD or more, \$3,775.00.
- 19 (ii) For an individual permit for a facility discharging 1
20 MGD or more but less than 10 MGD, \$3,000.00.
- 21 (iii) For an individual permit for a facility discharging
22 less than 1 MGD, \$1,950.00.
- 23 (iv) For a general permit for a high-flow facility, \$600.00.
- 24 (v) For a general permit for a low-flow facility, \$400.00.
- 25 (e) For a municipal facility that is a CSO facility,
26 \$6,000.00.
- 27 (f) For an individual permit for a wastewater stabilization

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1 lagoon, \$1,525.00.

2 (g) For a facility that holds a permit issued under this part
3 but has no discharge and the facility is connected to and is
4 authorized to discharge only to a municipal wastewater treatment
5 system, an annual permit maintenance fee of \$100.00.

[(6) A person applying for or obtaining a permit under this part for
an agricultural purpose is not subject to the application fee under
subsection (1) or the annual permit fee under subsection (5).]

6 [(7)] If the person required to pay an application fee under
7 subsection (1) or an annual permit fee under subsection (5) is a
8 municipality, the municipality may pass on the application fee or
9 the annual permit fee, or both, to each user of the municipal
10 facility.

11 [(8)] The department shall send invoices for annual permit fees
12 under subsection (5) to all permit holders by December 1 of each
13 year. The fee shall be based on the status of the facility as of
14 October 1 of that year. A person subject to an annual permit fee
15 shall pay the fee not later than January 15 of each year. The
16 department shall forward annual permit fees received under this
17 section to the state treasurer for deposit into the national
18 pollutant discharge elimination system fund created in section
19 3121.

20 [(9)] The department shall assess a penalty on all annual
21 permit fee payments submitted under this section after the due
22 date. The penalty shall be an amount equal to 0.75% of the
23 payment due for each month or portion of a month the payment
24 remains past due.

25 [(10)] Following payment of an annual permit fee, if a permittee
26 wishes to challenge its annual permit fee under this section, the
27 owner or operator shall submit the challenge in writing to the

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1 department. The department shall not process the challenge
2 unless it is received by the department by March 1 of the year
3 the payment is due. A challenge shall identify the facility and
4 state the grounds upon which the challenge is based. Within 30
5 calendar days after receipt of the challenge, the department
6 shall determine the validity of the challenge and provide the
7 permittee with notification of a revised annual permit fee and a
8 refund, if appropriate, or a statement setting forth the reason
9 or reasons why the annual permit fee was not revised. If the
10 owner or operator of a facility desires to further challenge its
11 annual permit fee, the owner or operator of the facility has an
12 opportunity for a contested case hearing as provided for under
13 the administrative procedures act of 1969, 1969 PA 306, MCL
14 24.201 to 24.328.

15 [(11)] The attorney general may bring an action for the
16 collection of the annual permit fee imposed under this section.

[(12) Within 30 days after the effective date of the amendatory act
that added this section, the department and the governor shall notify
each person holding a permit under this part authorizing a discharge into
surface water, other than a storm water permit, of the requirements of
this section.]

17 [(13)] As used in this section:

[(a) "Agricultural purpose" means the agricultural production or
processing of those plants and animals useful to human beings produced by
agriculture and includes, but is not limited to, forages and sod crops,
grains and feed crops, field crops, dairy animals and dairy products,
poultry and poultry products, cervidae, livestock, including breeding and
grazing, equine, fish and other aquacultural products, bees and bee
products, berries, herbs, fruits, vegetables, flowers, seeds, grasses,
nursery stock, trees and tree products, mushrooms, and other similar
products, or any other product, as determined by the commission of
agriculture, that incorporates the use of food, feed, fiber, or fur.
Agricultural purpose includes an operation or facility that produces
wine.]

18 [(b)] "Combined sewer overflow" means a discharge from a
19 combined sewer system that occurs when the flow capacity of the
20 combined sewer system is exceeded at a point prior to the

21 headworks of a publicly owned treatment works during wet weather
22 conditions.

23 [(c)] "Combined sewer system" means a sewer designed and used
24 to convey both storm water runoff and sanitary sewage, and which
25 contains lawfully installed regulators and control devices that
26 allow for delivery of sanitary flow to treatment during dry
27 weather periods and divert storm water and sanitary sewage to

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1 surface waters during storm flow periods.

2 [(d)] "CSO facility" means a facility whose discharge is solely
3 a combined sewer overflow.

4 [(e)] "EPA major facility" means a facility that is designated
5 by the United States environmental protection agency as being a
6 major facility under 40 C.F.R. 122.2.

7 [(f)] "EPA minor facility" means a facility that is not an EPA
8 major facility.

9 [(g)] "General permit" means a permit suitable for use at
10 facilities meeting eligibility criteria as specified in the
11 permit. With a general permit, the discharge from a specific
12 facility is acknowledged through a certificate of coverage issued
13 to the facility.

14 [(h)] "High-flow facility" means a facility that discharges 1
15 MGD or more.

16 [(i)] "Individual permit" means a permit developed for a
17 particular facility, taking into account that facility's specific
18 characteristics.

19 [(j)] "Industrial or commercial facility" means a facility that
20 is not a municipal facility.

21 [(k)] "Low-flow facility" means a facility that discharges less
22 than 1 MGD.

23 [(l)] "MGD" means 1,000,000 gallons per day.

24 [(m)] "Municipal facility" means a facility that is designed to
25 collect or treat sanitary wastewater, is either publicly or
26 privately owned, and serves a residential area or a group of
27 municipalities.

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1 [(n)] "Wastewater stabilization lagoon" means a type of
2 treatment system constructed of ponds or basins designed to
3 receive, hold, and treat sanitary wastewater for a predetermined
4 amount of time. Wastewater is treated through a combination of
5 physical, biological, and chemical processes.

6 Sec. 3121. (1) The national pollutant discharge elimination
7 system fund is created within the state treasury.

8 (2) The state treasurer may receive money or other assets
9 from any source for deposit into the fund. The state treasurer
10 shall direct the investment of the fund. The state treasurer
11 shall credit to the fund interest and earnings from fund
12 investments.

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

15 (4) Subject to subsection (5), the department shall expend
16 money from the fund, upon appropriation, only to administer the
17 national pollutant discharge elimination system program under
18 this part including, but not limited to, all of the following:

19 (a) Water quality standards development and maintenance.

20 (b) Permit development and issuance.

21 (c) Maintenance of program data.

22 (d) Ambient water quality monitoring conducted to determine
23 permit conditions and evaluate the effectiveness of permit
24 requirements.

25 (e) Activities conducted to determine a discharger's permit
26 compliance status, including, but not limited to, inspections,
27 discharge monitoring, and review of submittals.

1 (f) Laboratory services.

2 (g) Enforcement.

3 (h) Program administration activities.

4 (5) In any state fiscal year, the department shall not expend
5 more than \$3,000,000.00 of money from the fund. The department
6 shall expend 90% of the money in the fund at the close of each
7 state fiscal year as a credit to offset, on a pro rata basis,
8 each fee described in section 3120 for the following year.

9 (6) By January 1, 2006 and by January 1 of each year
10 thereafter, the department shall prepare and submit to the
11 governor, the legislature, the chairs of the standing committees
12 of the senate and house of representatives with primary
13 responsibility for issues related to natural resources and the
14 environment, and the chairs of the subcommittees of the senate
15 and house appropriations committees with primary responsibility
16 for appropriations to the department a report that details the
17 departmental activities of the previous fiscal year in
18 administering the department's national pollutant discharge
19 elimination system program that were funded by the fund. This
20 report shall include, at a minimum, all of the following as it
21 relates to the department:

22 (a) The number of full-time equated positions performing each
23 of the following functions:

24 (i) Permit issuance and development.

25 (ii) Compliance.

26 (iii) Enforcement.

27 (b) The number of permit applications received by the

1 department in the preceding year, including applications for new
2 and increased uses and reissuances.

3 (c) The number of staff hours dedicated to each of the fee
4 categories listed in section 3120.

5 (d) The number of permits issued for fee categories listed in
6 section 3120.

7 (e) The number of permit applications denied.

8 (f) The number of permit applications withdrawn by the
9 applicant.

10 (g) The percentage and number of permit applications that
11 were reviewed for administrative completeness within statutory
12 time frames.

13 (h) The percentage and number of permit applications
14 submitted to the department that were administratively complete
15 as received.

16 (i) The percentage and number of permit applications for
17 which a final action was taken by the department within statutory
18 time frames for new and increased uses and reissuances.

19 (j) The number of permits reopened by the department.

20 (k) The number of unfilled positions dedicated to the
21 national pollutant discharge elimination system program.

22 (l) The amount of revenue in the fund at the end of the
23 fiscal year.

24 (7) As used in this section:

25 (a) "Fund" means the national pollutant discharge elimination
26 system fund created in subsection (1).

27 (b) "National pollutant discharge elimination system program"

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1 means the national pollutant discharge elimination system program
2 delegated to the department under section 402 of title IV of the
3 federal water pollution control act, chapter 758, 86 Stat. 880,
4 33 U.S.C. 1342, and implemented under this part.

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