

Act No. 114
Public Acts of 2004
Approved by the Governor
May 21, 2004
Filed with the Secretary of State
May 21, 2004
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**STATE OF MICHIGAN
92ND LEGISLATURE
REGULAR SESSION OF 2004**

Introduced by Senator Leland

ENROLLED SENATE BILL No. 653

AN ACT to amend 1994 PA 451, entitled "An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, and assessments; to provide certain appropriations; to prescribe penalties and provide remedies; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts," by amending section 20129a (MCL 324.20129a), as amended by 1999 PA 30, and by adding section 3122a.

The People of the State of Michigan enact:

Sec. 3122a. In any state fiscal year, if the department collects more than \$2,000,000.00 under section 3122 in annual groundwater discharge permit fees, the department shall credit in the next fiscal year each permittee who paid a groundwater discharge permit fee a proportional amount of the fees collected in excess of \$2,000,000.00. However, if a permit is no longer required by the permittee in the next fiscal year, the department shall do the following:

(a) If the credited amount is \$50.00 or more, the department shall provide a refund to the permittee for the credited amount.

(b) If the credited amount is less than \$50.00, the department shall provide a credit to the permittee for an annual groundwater discharge permit fee that may be required in a subsequent year.

Sec. 20129a. (1) A person may petition the department within 6 months after completion of a baseline environmental assessment for a determination that that person meets the requirements for an exemption from liability under section 20126(1)(c) and, in conjunction with that exemption, a determination that the proposed use of the facility satisfies the person's obligations under section 20107a. This request may be made by a prospective purchaser or transferee prior to actual transfer of ownership or other interest to that person or by a lender prior to foreclosure. The request shall be submitted on a form provided by the department along with the fee provided in subsection (4). The person petitioning the department under this subsection shall attach the baseline environmental assessment, a detailed description of the proposed use of the facility, a plan for any response activities that are necessary to assure that the proposed use of the facility satisfies the requirements of section 20107a if a determination regarding compliance with that section is requested, and the qualifications of the environmental professionals who have made the recommendations.

(2) Within 15 business days after receipt of a petition under subsection (1), the department shall issue a written determination to the person submitting the petition that does either of the following:

(a) Affirms that the criteria for obtaining the exemption have been met and affirms that the proposed use of the facility would satisfy the person's obligations under section 20107a provided that the person complies with the plan for the proposed use of the facility submitted under subsection (1).

(b) Provides that the criteria for obtaining the exemption have not been met, or that the proposed use of the facility does not satisfy the person's obligation under section 20107a, the specific reasons for the denial, and how the applicant could meet the criteria and satisfy the person's obligations under section 20107a, if possible.

(3) A determination by the department under this section may be conditioned on completion of response activities described in the petition.

(4) Until June 5, 2005, a petition submitted under subsection (1) shall be accompanied by a fee of \$750.00. The department shall deposit all fees collected under this section into the fund. The department shall annually submit a report to the legislature that details all of the following:

(a) The number of petitions received pursuant to this section.

(b) The average length of time which the department has taken to issue written determinations pursuant to this section.

(c) The number of times in which written determinations were not issued within the required time period.

(d) The approximate amount of department staff time necessary to issue a written determination under this section.

(5) A person who is provided an affirmative determination under this section is not liable for a claim for response activity costs, fines or penalties, natural resources damages, or equitable relief under part 17, part 31, or common law resulting from the contamination identified in the petition or from contamination existing on the property on the date in which ownership or control of the property was transferred to the person. The liability protection afforded in this subsection does not extend to a violation of any permit issued under state law. This subsection does not alter a person's liability for a violation of section 20107a for a use or activity of property that is inconsistent with the determination.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Dany E. Randall

Clerk of the House of Representatives

Approved

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Governor