

HOUSE BILL No. 5802

March 1, 2006, Introduced by Reps. Alma Smith, Miller, Condino, Gleason, Accavitti, Anderson, Leland, Kolb, Brandenburg, Farrah, Stewart, Wojno, David Law, Zelenko, Donigan, Polidori, Hopgood, Lemmons, Jr., Vagnozzi, Kathleen Law, Virgil Smith, Gonzales, Lipsey, Plakas, Clack, Tobocman and Lemmons, III and referred to the Committee on Agriculture.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 3115 and 3120 (MCL 324.3115 and 324.3120),
section 3115 as amended by 2004 PA 143 and section 3120 as added by
2004 PA 91.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3115. (1) The department may request the attorney general
2 to commence a civil action for appropriate relief, including a
3 permanent or temporary injunction, for a violation of this part or
4 ~~a provision of~~ a permit or order issued or rule promulgated under
5 this part. An action under this subsection may be brought in the
6 circuit court for the county of Ingham or for the county in which
7 the defendant is located, resides, or is doing business. If
8 requested by the defendant within 21 days after service of process,
9 the court shall grant a change of venue to the circuit court for

1 the county of Ingham or for the county in which the alleged
2 violation occurred, is occurring, or, in the event of a threat of
3 violation, will occur. The court has jurisdiction to restrain the
4 violation and to require compliance. In addition to any other
5 relief granted under this subsection, the court, except as
6 otherwise provided in this subsection, shall impose a civil fine of
7 not less than \$2,500.00 and the court may award reasonable attorney
8 fees and costs to the prevailing party. However, all of the
9 following apply:

10 (a) The maximum fine imposed by the court shall be not more
11 than \$25,000.00 per day of violation.

12 (b) For a failure to report a release to the department or to
13 the primary public safety answering point under section 3111b(1),
14 the court shall impose a civil fine of not more than \$2,500.00.

15 (c) For a failure to report a release to the local health
16 department under section 3111b(2), the court shall impose a civil
17 fine of not more than \$500.00.

18 (2) A person who at the time of the violation knew or should
19 have known that he or she discharged a substance contrary to this
20 part, or contrary to a permit or order issued or rule promulgated
21 under this part, or who intentionally makes a false statement,
22 representation, or certification in an application for or form
23 pertaining to a permit or in a notice or report required by the
24 terms and conditions of ~~an issued~~ A permit, or who intentionally
25 renders inaccurate a monitoring device or record required to be
26 maintained by the department, is guilty of a felony and shall be
27 fined not less than \$2,500.00 or more than \$25,000.00 for each

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

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

26 (4) Upon a finding by the court that the actions of a criminal
27 defendant pose or posed a substantial endangerment to the public

1 health, safety, or welfare, the court shall impose, in addition to
2 the penalties set forth in subsection (2), a fine of not less than
3 \$1,000,000.00 and, in addition to a fine, a sentence of 5 years'
4 imprisonment.

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

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

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

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

20 **(7) THE ATTORNEY GENERAL MAY FILE A CIVIL SUIT IN A COURT OF**
21 **COMPETENT JURISDICTION TO RECOVER THE FULL VALUE OF THE INJURIES**
22 **DONE TO THE NATURAL RESOURCES OF THE STATE AND THE COSTS OF**
23 **SURVEILLANCE AND ENFORCEMENT BY THE STATE RESULTING FROM A**
24 **VIOLATION OF THIS PART OR A PERMIT OR ORDER ISSUED OR RULE**
25 **PROMULGATED UNDER THIS PART.**

26 **(8) ~~(7) A~~ ALL OF THE FOLLOWING APPLY TO A** civil fine or
27 other award ordered paid pursuant to this section: ~~shall do both~~

1 ~~of the following:~~

2 (a) ~~Be~~ **IT IS** payable to the state of Michigan and **SHALL BE**
3 credited **AS FOLLOWS:**

4 (i) **IF THE VIOLATION WAS RELATED TO A DISCHARGE FROM A CAFO, TO**
5 **THE CAFO CLEANUP AND ENFORCEMENT FUND CREATED UNDER SECTION 8637.**
6 **AS USED IN THIS SUBPARAGRAPH, "CAFO" MEANS THAT TERM AS DEFINED IN**
7 **SECTION 8601.**

8 (ii) **FOR VIOLATIONS OTHER THAN THOSE DESCRIBED IN SUBPARAGRAPH**
9 **(i),** to the general fund.

10 (b) ~~Constitute~~ **IT CONSTITUTES** a lien on any property ~~—of~~
11 ~~any nature or kind,~~ owned by the defendant.

12 ~~—— (8) A lien under subsection (7)(b) shall take~~ **THE LIEN TAKES**
13 effect and ~~have~~ **HAS** priority over all other liens and
14 encumbrances except those filed or recorded prior to the date of
15 judgment, **BUT** only if notice of the lien is filed or recorded as
16 required by state or federal law.

17 ~~—— (9) A lien~~ **IF NOTICE OF THE LIEN IS** filed or recorded,
18 ~~pursuant to subsection (8)~~ **THE LIEN** shall be terminated according
19 to the procedures required by state or federal law within 14 days
20 after the fine or other award ordered to be paid is paid.

21 ~~—— (10) In addition to any other method of collection, any fine~~
22 ~~or other award ordered paid~~

23 (C) **IT** may be recovered by right of setoff to any debt owed to
24 the defendant by ~~the~~ **THIS** state, ~~of Michigan,~~ including the
25 right to a refund of income taxes paid.

26 Sec. 3120. (1) ~~Until October 1, 2009, an~~ **AN** application for
27 a new permit, a reissuance of a permit, or a modification of an

1 existing permit under this part authorizing a discharge into
2 surface water, other than a storm water discharge, shall be
3 accompanied by an application fee as follows:

4 (a) For an EPA major facility permit, \$750.00.

5 (b) For an EPA minor facility individual permit, a CSO permit,
6 or a wastewater stabilization lagoon individual permit, \$400.00.

7 (c) For an EPA minor facility general permit, \$75.00.

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

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

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

23 (5) ~~Until October 1, 2009, a~~ **A** person who receives a permit
24 under this part authorizing a discharge into surface water, other
25 than a stormwater discharge, is subject to an annual permit fee as
26 follows:

27 (a) For an industrial or commercial facility that is an EPA

1 major facility, \$8,700.00.

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

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

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

6 (iii) For an individual permit for a low-flow facility,
7 \$1,650.00.

8 (iv) For an individual permit for a high-flow facility,
9 \$3,650.00.

10 (c) For a municipal facility that is an EPA major facility,
11 the following amounts:

12 (i) For an individual permit for a facility discharging 500 MGD
13 or more, \$213,000.00.

14 (ii) For an individual permit for a facility discharging 50 MGD
15 or more but less than 500 MGD, \$20,000.00.

16 (iii) For an individual permit for a facility discharging 10 MGD
17 or more but less than 50 MGD, \$13,000.00.

18 (iv) For an individual permit for a facility discharging less
19 than 10 MGD, \$5,500.00.

20 (d) For a municipal facility that is an EPA minor facility,
21 the following amounts:

22 (i) For an individual permit for a facility discharging 10 MGD
23 or more, \$3,775.00.

24 (ii) For an individual permit for a facility discharging 1 MGD
25 or more but less than 10 MGD, \$3,000.00.

26 (iii) For an individual permit for a facility discharging less
27 than 1 MGD, \$1,950.00.

1 (iv) For a general permit for a high-flow facility, \$600.00.

2 (v) For a general permit for a low-flow facility, \$400.00.

3 (e) For a municipal facility that is a CSO facility,
4 \$6,000.00.

5 (f) For an individual permit for a wastewater stabilization
6 lagoon, \$1,525.00.

7 (g) For an individual or general permit for an agricultural
8 purpose, \$600.00, unless either of the following applies:

9 (i) The facility is an EPA minor facility and would qualify for
10 a general permit for a low-flow facility, in which case the fee
11 ~~would be~~ **IS** \$150.00.

12 (ii) The facility is an EPA major facility that is not a
13 farmers' cooperative corporation, in which case the fee ~~would be~~
14 **IS** \$8,700.00.

15 **(H) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SUBSECTION,**
16 **FOR AN INDIVIDUAL PERMIT FOR A CAFO, THE FOLLOWING FEE, AS**
17 **APPLICABLE:**

18 **(i) FOR A LARGE CAFO, \$5,500.00.**

19 **(ii) FOR A MEDIUM CAFO, \$1,600.00.**

20 **(iii) FOR A SMALL CAFO, \$600.00.**

21 **(I) ~~(h)~~** For a facility that holds a permit issued under this
22 part but has no discharge **TO WATERS OF THE STATE** and ~~the facility~~
23 is connected to and ~~is~~ authorized to discharge only to a
24 municipal wastewater treatment system, an annual permit maintenance
25 fee of \$100.00. However, if a facility does have a discharge or at
26 some point is no longer connected to a municipal wastewater
27 treatment system, the annual permit fee shall be the appropriate

1 fee as otherwise provided in this subsection.

2 (6) If the person required to pay an application fee under
3 subsection (1) or an annual permit fee under subsection (5) is a
4 municipality, the municipality may pass on the application fee or
5 the annual permit fee, or both, to each user of the municipal
6 facility.

7 (7) The department shall send invoices for annual permit fees
8 under subsection (5) to all permit holders by December 1 of each
9 year. The fee shall be based on the status of the facility as of
10 October 1 of that year. A person subject to an annual permit fee
11 shall pay the fee not later than January 15 of each year. Failure
12 by the department to send an invoice by the deadline, or failure of
13 a person to receive an invoice **THAT WAS SENT BY THE DEADLINE**, does
14 not relieve that person of his or her obligation to pay the annual
15 permit fee. If the department does not meet the December 1 deadline
16 for sending invoices, the annual permit fee is due not later than
17 45 days after receiving an invoice. The department shall forward
18 annual permit fees received under this section to the state
19 treasurer for deposit **AS FOLLOWS:**

20 (A) **ALL FEES OTHER THAN FEES FOR CAFOS SHALL BE DEPOSITED** into
21 the national pollutant discharge elimination system fund created in
22 section 3121.

23 (B) **FEES FOR CAFOS SHALL BE DEPOSITED INTO THE CAFO CLEANUP**
24 **AND ENFORCEMENT FUND CREATED UNDER SECTION 8637.**

25 (8) The department shall assess a penalty on all annual permit
26 fee payments submitted under this section after the due date. The
27 penalty shall be an amount equal to 0.75% of the payment due for

1 each month or portion of a month the payment remains past due.

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

18 (10) The attorney general may bring an action for the
19 collection of the annual permit fee imposed under this section.

20 ~~— (11) Within 30 days after the effective date of the amendatory~~
21 ~~act that added this section, the director of the department shall~~
22 ~~notify each person holding a permit under this part authorizing a~~
23 ~~discharge into surface water, other than a storm water permit, of~~
24 ~~the requirements of this section.~~

25 (11) ~~—(12)~~ As used in this section:

26 (a) "Agricultural purpose" means the agricultural production
27 or processing of those plants and animals useful to human beings

1 produced by agriculture and includes, but is not limited to,
2 forages and sod crops, grains and feed crops, field crops, dairy
3 animals and dairy products, poultry and poultry products, cervidae,
4 livestock, including breeding and grazing, equine, fish and other
5 aquacultural products, bees and bee products, berries, herbs,
6 fruits, vegetables, flowers, seeds, grasses, nursery stock, trees
7 and tree products, mushrooms, and other similar products, or any
8 other product, as determined by the commission of agriculture, that
9 incorporates the use of food, feed, fiber, or fur. Agricultural
10 purpose includes an operation or facility that produces wine.

11 **(B) "CAFO" MEANS THAT TERM AS DEFINED IN SECTION 8601.**

12 **(C) ~~(b)~~ "Combined sewer overflow" OR "CSO" means a discharge**
13 **from a combined sewer system that occurs when the flow capacity of**
14 **the combined sewer system is exceeded at a point prior to the**
15 **headworks of a publicly owned treatment works during wet weather**
16 **conditions.**

17 **(D) ~~(e)~~ "Combined sewer system" means a sewer designed and**
18 **used to convey both storm water runoff and sanitary sewage, and**
19 **which contains lawfully installed regulators and control devices**
20 **that allow for delivery of sanitary flow to treatment during dry**
21 **weather periods and divert storm water and sanitary sewage to**
22 **surface waters during storm flow periods.**

23 **(E) ~~(d)~~ "CSO facility" means a facility whose discharge is**
24 **solely a combined sewer overflow.**

25 **(F) ~~(e)~~ "EPA major facility" means a facility that is**
26 **designated by the United States environmental protection agency as**
27 **being a major facility under 40 ~~C.F.R.~~ CFR 122.2.**

1 (G) ~~(f)~~ "EPA minor facility" means a facility that is not an
2 EPA major facility.

3 (H) ~~(g)~~ "Farmers' cooperative corporation" means a farmers'
4 cooperative corporation organized within the limitations of section
5 98 of **THE MICHIGAN GENERAL CORPORATION ACT**, 1931 PA 327, MCL
6 450.98.

7 (I) ~~(h)~~ "General permit" means a permit suitable for use at
8 facilities meeting eligibility criteria as specified in the permit.
9 With a general permit, the discharge from a specific facility is
10 acknowledged through a certificate of coverage issued to the
11 facility.

12 (J) ~~(i)~~ "High-flow facility" means a facility that
13 discharges 1 MGD or more.

14 (K) ~~(j)~~ "Individual permit" means a permit developed for a
15 particular facility, taking into account that facility's specific
16 characteristics.

17 (L) ~~(k)~~ "Industrial or commercial facility" means a facility
18 that is not a municipal facility.

19 (M) **"LARGE CAFO" MEANS THAT TERM AS DEFINED IN SECTION 8603.**

20 (N) ~~(l)~~ "Low-flow facility" means a facility that discharges
21 less than 1 MGD.

22 (O) **"MEDIUM CAFO" MEANS THAT TERM AS DEFINED IN SECTION 8603.**

23 (P) ~~(m)~~ "MGD" means 1,000,000 gallons per day.

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

1 (R) "SMALL CAFO" MEANS THAT TERM AS DEFINED IN SECTION 8605.

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

7 Enacting section 1. This amendatory act does not take effect
8 unless all of the following bills of the 93rd Legislature are
9 enacted into law:

10 (a) Senate Bill No.____ or House Bill No. 5801(request no.
11 01066'05).

12 (b) Senate Bill No.____ or House Bill No. 5803(request no.
13 01074'05).

14 (c) Senate Bill No.____ or House Bill No. 5809(request no.
15 01081'05).

16 (d) Senate Bill No.____ or House Bill No. 5807(request no.
17 02008'05).

18 (e) Senate Bill No.____ or House Bill No. 5808(request no.
19 02009'05).

20 (f) Senate Bill No.____ or House Bill No. 5806(request no.
21 02010'05).

22 (g) Senate Bill No.____ or House Bill No. 5804(request no.
23 02011'05).

24 (h) Senate Bill No.____ or House Bill No. 5805(request no.
25 02032'05).