

Act No. 55
Public Acts of 2005
Approved by the Governor
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**STATE OF MICHIGAN
93RD LEGISLATURE
REGULAR SESSION OF 2005**

Introduced by Rep. Pavlov

ENROLLED HOUSE BILL No. 4444

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 sections 9101, 9105, 9106, 9110, and 9113 (MCL 324.9101, 324.9105, 324.9106, 324.9110, and 324.9113), section 9101 as amended by 2001 PA 227 and sections 9105, 9106, 9110, and 9113 as amended by 2000 PA 504.

The People of the State of Michigan enact:

Sec. 9101. (1) "Agricultural practices" means all land farming operations except the plowing or tilling of land for the purpose of crop production or the harvesting of crops.

(2) "Authorized public agency" means a state agency or an agency of a local unit of government authorized under section 9110 to implement soil erosion and sedimentation control procedures with regard to earth changes undertaken by it.

(3) "Conservation district" means a conservation district authorized under part 93.

(4) "Consultant" means either of the following:

(a) An individual who has a current certificate of training under section 9123.

(b) A person who employs 1 or more individuals who have current certificates of training under section 9123.

(5) "County agency" means an officer, board, commission, department, or other entity of county government.

(6) "County enforcing agency" means a county agency or a conservation district designated by a county board of commissioners under section 9105.

(7) "County program" or "county's program" means a soil erosion and sedimentation control program established under section 9105.

(8) "Department" means the department of environmental quality.

(9) "Earth change" means a human-made change in the natural cover or topography of land, including cut and fill activities, which may result in or contribute to soil erosion or sedimentation of the waters of the state. Earth change does not include the practice of plowing and tilling soil for the purpose of crop production.

(10) "Gardening" means activities necessary to the growing of plants for personal use, consumption, or enjoyment.

(11) "Local ordinance" means an ordinance enacted by a local unit of government under this part providing for soil erosion and sedimentation control.

(12) "Municipal enforcing agency" means an agency designated by a municipality under section 9106 to enforce a local ordinance.

(13) "Municipality" means any of the following:

(a) A city.

(b) A village.

(c) A charter township.

(d) A general law township that is located in a county with a population of 200,000 or more.

(14) "Rules" means the rules promulgated pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(15) "Seawall maintenance" means an earth change activity landward of the seawall.

(16) "Sediment" means solid particulate matter, including both mineral and organic matter, that is in suspension in water, is being transported, or has been removed from its site of origin by the actions of wind, water, or gravity and has been deposited elsewhere.

(17) "Soil erosion" means the wearing away of land by the action of wind, water, gravity, or a combination of wind, water, or gravity.

(18) "State agency" means a principal state department or a state public university.

(19) "Violation of this part" or "violates this part" means a violation of this part, the rules promulgated under this part, a permit issued under this part, or a local ordinance enacted under this part.

(20) "Waters of the state" means the Great Lakes and their connecting waters, inland lakes and streams as defined in rules promulgated under this part, and wetlands regulated under part 303.

Sec. 9105. (1) Subject to subsection (6), a county is responsible for the administration and enforcement of this part and the rules promulgated under this part throughout the county except as follows:

(a) Within a municipality that has assumed the responsibility for soil erosion and sedimentation control under section 9106.

(b) With regard to earth changes of authorized public agencies.

(2) Subject to subsection (3), the county board of commissioners of each county, by resolution, shall designate a county agency, or a conservation district upon the concurrence of the conservation district, as the county enforcing agency responsible for administration and enforcement of this part and the rules promulgated under this part in the name of the county. The resolution may set forth a schedule of fees for inspections, plan reviews, and permits and may set forth other matters relating to the administration and enforcement of the county program and this part and the rules promulgated under this part.

(3) In lieu of or in addition to a resolution provided for in subsection (2), the county board of commissioners of a county may provide by ordinance for soil erosion and sedimentation control in the county. An ordinance adopted under this subsection may be more restrictive than, but shall not make lawful that which is unlawful under, this part and the rules promulgated under this part. If an ordinance adopted under this subsection is more restrictive than this part and the rules promulgated under this part, the county enforcing agency shall notify a person receiving a permit under the ordinance that the ordinance is more restrictive than this part and the rules promulgated under this part. The ordinance shall incorporate by reference the rules promulgated under this part that do not conflict with a more restrictive ordinance and may set forth such other matters as the county board of commissioners considers necessary or desirable. The ordinance may provide penalties for a violation of the ordinance that are consistent with section 9121.

(4) A copy of a resolution or ordinance adopted under this section and all subsequent amendments to the resolution or ordinance shall be forwarded to the department for the department's review and approval. The department shall forward a copy to the conservation district for that county for review and comment.

(5) Two or more counties may provide for joint enforcement and administration of this part and the rules promulgated under this part by entering into an interlocal agreement pursuant to the urban cooperation act of 1967, 1967 (Ex Sess) PA 7, MCL 124.501 to 124.512.

(6) The department shall conduct a review of a county's program every 5 years. The review shall be conducted at least 6 months before the expiration of each succeeding 5-year period. The department shall approve a county's program if all of the following conditions are met:

(a) The county has passed a resolution or enacted an ordinance as provided in this section.

(b) The individuals with decision-making authority who are responsible for administering the county program have current certificates of training under section 9123.

(c) The county has effectively administered and enforced the county program in the past 5 years or has implemented changes in its administration or enforcement procedures that the department determines will result in the county effectively administering and enforcing the county program. In determining whether the county has met the requirement of this subdivision, the department shall consider all of the following:

(i) Whether a mechanism is in place to provide funding to administer the county's program.

(ii) Whether the county has conducted adequate inspections to assure minimization of soil erosion and off-site sedimentation.

(iii) The effectiveness of the county's past compliance and enforcement efforts.

(iv) The adequacy and effectiveness of the applications and soil erosion and sedimentation control plans being accepted by the county.

(v) The adequacy and effectiveness of the permits issued by the county and the inspections being performed by the county.

(vi) The conditions at construction sites under the jurisdiction of the county as documented by departmental inspections.

(7) Following a review under subsection (6), the department shall notify the county of the results of its review and whether the department proposes to approve or disapprove the county's program. Within 30 days of receipt of the notice under this subsection, a county may request and the department shall hold an informal meeting to discuss the review and the proposed action by the department.

(8) Following the meeting under subsection (7), if requested, and consideration of the review under subsection (6), if the department does not approve a county's program, the department shall enter an order, stipulation, or consent agreement under section 9112(7) placing the county on probation. In addition, at any time that the department determines that a county that was previously approved by the department under subsection (6) is not satisfactorily administering and enforcing the county's program, the department shall enter into an order, stipulation, or consent agreement under section 9112(7) placing the county on probation. During the 6-month period after a county is placed on probation, the department shall consult with the county on how the county could change its administration of the county program in a manner that would result in its approval.

(9) Within 6 months after a county has been placed on probation under subsection (8), the county may notify the department that it intends to hire a consultant to administer the county's program. If, within 60 days after notifying the department, the county hires a consultant that is acceptable to the department, then within 1 year after the county hires the consultant, the department shall conduct a review of the county's program to determine whether or not the county program can be approved.

(10) If any of the following occur, the department shall hire a consultant to administer the county's program:

(a) The county does not notify the department of its intent to hire a consultant under subsection (9).

(b) The county does not hire a consultant that is acceptable to the department within 60 days after notifying the department of its intent to hire a consultant under subsection (9).

(c) The county remains unapproved following the department's review under subsection (9).

(11) Upon hiring a consultant under subsection (10), the department may establish a schedule of fees for inspections, review of soil erosion and sedimentation control plans, and permits for the county's program that will provide sufficient revenues to pay for the cost of the contract with the consultant, or the department may bill the county for the cost of the contract with the consultant. As used in this subsection, "cost of the contract" means the actual cost of a contract with a consultant plus the documented costs to the department in administering the contract, but not to exceed 10% of the actual cost of the contract.

(12) At any time that a county is on probation as provided for in this section, the county may request the department to conduct a review of the county's program. If, upon such review, the county has implemented appropriate changes to the county's program, the department shall approve the county's program. If the department approves a county's program under this subsection, the department shall rescind its order, stipulation, or consent agreement that placed the county on probation.

Sec. 9106. (1) Subject to subsection (3), a municipality by ordinance may provide for soil erosion and sedimentation control on public and private earth changes within its boundaries except that a township ordinance shall not be applicable within a village that has in effect such an ordinance. An ordinance may be more restrictive than, but shall not make lawful that which is unlawful under, this part and the rules promulgated under this part. If an ordinance adopted under this section is more restrictive than this part and the rules promulgated under this part, the municipal enforcing agency shall notify a person receiving a permit under the ordinance that the ordinance is more restrictive than this part and the rules promulgated under this part. The ordinance shall incorporate by reference the rules promulgated under

this part that do not conflict with a more restrictive ordinance, shall designate a municipal enforcing agency responsible for administration and enforcement of the ordinance, and may set forth such other matters as the legislative body considers necessary or desirable. The ordinance shall be applicable and shall be enforced with regard to all private and public earth changes within the municipality except earth changes by an authorized public agency. The municipality may consult with a conservation district for assistance or advice in the preparation of the ordinance. The ordinance may provide penalties for a violation of the ordinance that are consistent with section 9121.

(2) An ordinance related to soil erosion and sedimentation control that is not approved by the department as conforming to the minimum requirements of this part and the rules promulgated under this part has no force or effect. A municipality shall submit a copy of its proposed ordinance or of a proposed amendment to its ordinance to the department for approval before adoption. The department shall forward a copy to the county enforcing agency of the county in which the municipality is located and the appropriate conservation district for review and comment. Within 90 days after the department receives an existing ordinance, proposed ordinance, or amendment, the department shall notify the clerk of the municipality of its approval or disapproval along with recommendations for revision if the ordinance, proposed ordinance, or amendment does not conform to the minimum requirements of this part or the rules promulgated under this part. If the department does not notify the clerk of the local unit within the 90-day period, the ordinance, proposed ordinance, or amendment shall be considered to have been approved by the department.

(3) A municipality shall not administer and enforce this part or the rules promulgated under this part or a local ordinance unless the department has approved the municipality. An approval under this section is valid for 5 years, after which the department shall review the municipality for reapproval. At least 6 months before the expiration of each succeeding 5-year approval period, the department shall complete a review of the municipality for reapproval. The department shall approve a municipality if all of the following conditions are met:

(a) The municipality has enacted an ordinance as provided in this section that is at least as restrictive as this part and the rules promulgated under this part.

(b) The individuals with decision-making authority who are responsible for administering the soil erosion and sedimentation control program for the municipality have current certificates of training under section 9123.

(c) The municipality has submitted evidence of its ability to effectively administer and enforce a soil erosion and sedimentation control program. In determining whether the municipality has met the requirements of this subdivision, the department shall consider all of the following:

(i) Whether a mechanism is in place to provide funding to administer the municipality's soil erosion and sedimentation control program.

(ii) The adequacy of the documents proposed for use by the municipality including, but not limited to, application forms, soil erosion and sedimentation control plan requirements, permit forms, and inspection reports.

(iii) If the municipality has previously administered a soil erosion and sedimentation control program, whether the municipality effectively administered and enforced the program in the past or has implemented changes in its administration or enforcement procedures that the department determines will result in the municipality effectively administering and enforcing a soil erosion and sedimentation control program in compliance with this part and the rules promulgated under this part. In determining whether the municipality has met the requirement of this subparagraph, the department shall consider all of the following:

(A) Whether the municipality has had adequate funding to administer the municipality's soil erosion and sedimentation control program.

(B) Whether the municipality has conducted adequate inspections to assure minimization of soil erosion and off-site sedimentation.

(C) The effectiveness of the municipality's past compliance and enforcement efforts.

(D) The adequacy and effectiveness of the applications and soil erosion and sedimentation control plans being accepted by the municipality.

(E) The adequacy and effectiveness of the permits issued by the municipality and the inspections being performed by the municipality.

(F) The conditions at construction sites under the jurisdiction of the municipality as documented by departmental inspections.

(4) If the department determines that a municipality is not approved under subsection (3) or that a municipality that was previously approved under subsection (3) is not satisfactorily administering and enforcing this part and the rules promulgated under this part, the department shall enter an order, stipulation, or consent agreement under section 9112(7) denying the municipality authority or revoking the municipality's authority to administer a soil erosion and sedimentation control program. Upon entry of this order, stipulation, or consent agreement, the county program for the county in which the municipality is located becomes operative within the municipality.

(5) A municipality that elects to rescind its ordinance shall notify the department. Upon rescission of its ordinance, the county program for the county in which the municipality is located becomes operative within the municipality.

(6) A municipality that rescinds its ordinance or is not approved by the department to administer the program shall retain jurisdiction over projects under permit at that time. The municipality shall retain jurisdiction until the projects are completed and stabilized or the county agrees to assume jurisdiction over the permitted earth changes.

Sec. 9110. (1) Subject to subsection (4), a state agency or an agency of a local unit of government may apply to the department for designation as an authorized public agency by submitting to the department the soil erosion and sedimentation control procedures governing all earth changes normally undertaken by the agency. If the applicant is an agency of a local unit of government, the department shall submit the procedures to the county enforcing agency and the appropriate conservation district for review. The county enforcing agency and the conservation district shall submit their comments on the procedures to the department within 60 days. If the applicant is a state agency, the department shall submit the procedures to the department of agriculture for review, and the department of agriculture shall submit its comments on the procedures to the department within 60 days.

(2) Subject to subsection (4), if the department finds that the soil erosion and sedimentation control procedures of the state agency or the agency of the local unit of government meet the requirements of this part and rules promulgated under this part, the department shall designate the agency as an authorized public agency.

(3) Subject to subsection (4), after approval of the procedures and designation as an authorized public agency pursuant to subsection (2), all earth changes maintained or undertaken by the authorized public agency shall be undertaken pursuant to the approved procedures. If determined necessary by the department and upon request of an authorized public agency, the department may grant a variance from the provisions of this subsection.

(4) A state agency or an agency of a local unit of government shall not administer and enforce this part and the rules promulgated under this part as an authorized public agency unless the department has approved the agency under this section. An approval under this section is valid for 5 years, after which the department shall review the agency for reapproval. At least 6 months before the expiration of each succeeding 5-year period, the department shall complete a review of the authorized public agency for reapproval. The department shall approve a state agency or an agency of a local unit of government if all of the following conditions are met:

(a) The agency has adopted soil erosion and sedimentation control procedures that are at least as restrictive as this part and the rules promulgated under this part.

(b) The individuals with decision-making authority who are responsible for administering the soil erosion and sedimentation control procedures have current certificates of training under section 9123.

(c) The agency has submitted evidence of its ability to effectively administer soil erosion and sedimentation control procedures. In determining whether the agency has met the requirement of this subdivision, the department shall consider all of the following:

(i) Funding to administer the agency's soil erosion and sedimentation control program.

(ii) The agency's plans for inspections to assure minimization of soil erosion and off-site sedimentation.

(iii) The adequacy of the agency's soil erosion and sedimentation control procedures.

(iv) If the agency has previously administered soil erosion and sedimentation control procedures, the agency has effectively administered these procedures or has implemented changes in their administration that the department determines will result in the agency effectively administering the soil erosion and sedimentation control procedures. In determining whether the agency has met the requirement of this subparagraph, the department shall consider all of the following:

(A) Whether the agency has had adequate funding to administer the agency's soil erosion and sedimentation control program.

(B) Whether the agency has conducted adequate inspections to assure minimization of soil erosion and off-site sedimentation.

(C) The effectiveness of the agency's past compliance and enforcement efforts.

(D) The adequacy of the agency's soil erosion and sedimentation control plans and procedures as required by rule.

(E) The conditions at construction sites under the jurisdiction of the agency as documented by departmental inspections.

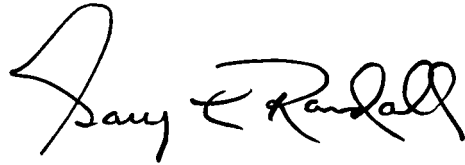
(5) If the department determines that a state agency or an agency of a local unit of government is not approved under subsection (4) or that a state agency or an agency of a local unit of government that was previously approved under subsection (4) is not satisfactorily administering and enforcing this part and the rules promulgated under this part, the department shall enter an order, stipulation, or consent agreement under section 9112(7) denying or revoking the designation of the state agency or agency of a local unit of government as an authorized public agency.

Sec. 9113. (1) Notwithstanding the existence or pursuit of any other remedy, the department or a county enforcing agency or municipal enforcing agency may maintain an action in its own name in a court of competent jurisdiction for an injunction or other process against a person to restrain or prevent violations of this part.

(2) At any reasonable time, an agent appointed by the department, a county enforcing agency, or a municipal enforcing agency may enter upon any private or public property for the purpose of inspecting and investigating conditions or practices that may be in violation of this part. However, an investigation or inspection under this subsection shall comply with the United States constitution and the state constitution of 1963.

Enacting section 1. This amendatory act does not take effect unless Senate Bill No. 282 of the 93rd Legislature is enacted into law.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved _____

Governor