

SUBSTITUTE FOR
SENATE BILL NO. 448

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending section 3115 (MCL 324.3115), as amended by 2004 PA 143,
and by adding section 3113a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 3113A. (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION,
2 BEGINNING 30 DAYS AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT
3 THAT ADDED THIS SECTION, A PERSON SHALL NOT CONSTRUCT FACILITIES OR
4 STRUCTURES FOR THE OPERATION OF A LARGE CAFO OR EXPAND AN EXISTING
5 LARGE CAFO WITHOUT FIRST OBTAINING A CERTIFICATION OF CONSTRUCTION
6 FROM THE DEPARTMENT OF AGRICULTURE UNDER THIS SECTION FOR THE
7 CONSTRUCTION OR EXPANSION.

8 (2) A PERSON MAY APPLY FOR A CERTIFICATION OF CONSTRUCTION

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1 UNDER THIS SECTION BY SUBMITTING TO THE DEPARTMENT OF AGRICULTURE
2 AN APPLICATION CONTAINING ALL OF THE FOLLOWING INFORMATION:

3 (A) THE NAME AND ADDRESS OF THE APPLICANT, OF ALL PARTNERS IF
4 THE APPLICANT IS A PARTNERSHIP OR OF ALL OFFICERS AND DIRECTORS IF
5 THE APPLICANT IS A CORPORATION, AND OF ANY OTHER PERSON WHO HAS A
6 RIGHT TO CONTROL OR IN FACT CONTROLS MANAGEMENT OF THE APPLICANT OR
7 THE SELECTION OF OFFICERS, DIRECTORS, OR MANAGERS OF THE APPLICANT.

8 (B) THE TYPE AND NUMBER OF LIVESTOCK THAT THE LARGE CAFO WOULD
9 BE DESIGNED TO RAISE OR MAINTAIN.

10 (C) DESIGN AND CONSTRUCTION PLANS FOR THE PROPOSED
11 CONSTRUCTION OF THE LARGE CAFO THAT INCLUDE THE PROPOSED LOCATION
12 OF THE CONSTRUCTION, ANTICIPATED BEGINNING AND ENDING DATES FOR
13 WORK PERFORMED, AND ANY OTHER RELEVANT INFORMATION THE DEPARTMENT
14 OF AGRICULTURE REQUIRES.

15 (D) WHETHER THE APPLICANT HAS EVER BEEN FOUND BY A COURT TO BE
16 IN VIOLATION OF THIS PART, THE TYPE OF ANY VIOLATION, AND THE DATE
17 OF ANY VIOLATION.

18 (3) UPON RECEIPT OF AN APPLICATION UNDER THIS SECTION, THE
19 DEPARTMENT OF AGRICULTURE SHALL <<NOTIFY EACH CITY, VILLAGE, OR TOWNSHIP,
AND THE COUNTY IN WHICH THE LARGE CAFO IS LOCATED AND SHALL>> CONDUCT AN
INSPECTION OF THE

20 CONSTRUCTION SITE AT THE LARGE CAFO OR PROPOSED LARGE CAFO.

21 (4) WITHIN 90 DAYS AFTER RECEIPT OF AN ADMINISTRATIVELY
22 COMPLETE APPLICATION UNDER THIS SECTION, THE DEPARTMENT OF
23 AGRICULTURE SHALL MAKE A DECISION ON WHETHER TO APPROVE OR DENY A
24 CERTIFICATION OF CONSTRUCTION. SUBJECT TO SUBSECTION (5), THE
25 DEPARTMENT OF AGRICULTURE SHALL APPROVE A CERTIFICATION OF
26 CONSTRUCTION UNDER THIS SECTION IF IT DETERMINES THAT THE
27 APPLICANT'S PROPOSED CONSTRUCTION OR EXPANSION CONFORMS TO BOTH OF

1 THE FOLLOWING:

2 (A) GENERALLY ACCEPTED AGRICULTURAL AND MANAGEMENT PRACTICES
3 FOR SITE SELECTION AND ODOR CONTROL UNDER THE MICHIGAN RIGHT TO
4 FARM ACT, 1981 PA 93, MCL 286.471 TO 286.474.

5 (B) CONSERVATION PRACTICE STANDARD CODE 313 (WASTE STORAGE
6 FACILITY), UNITED STATES DEPARTMENT OF AGRICULTURE-NATURAL RESOURCE
7 CONSERVATION SERVICE, NRCS MICHIGAN FIELD OFFICE TECHNICAL GUIDE,
8 NOVEMBER 2005.

9 (5) THE DEPARTMENT OF AGRICULTURE SHALL DENY A CERTIFICATION
10 OF CONSTRUCTION UNDER THIS SECTION IF IT DETERMINES THAT THE PERMIT
11 APPLICATION CONTAINS MISLEADING OR FALSE INFORMATION OR IF THE
12 DESIGN AND PLANS FAIL TO CONFORM TO THE REQUIREMENTS OF SUBSECTION
13 (4). IF THE DEPARTMENT OF AGRICULTURE FAILS TO MAKE A DECISION
14 WITHIN 90 DAYS OF RECEIPT OF AN ADMINISTRATIVELY COMPLETE
15 APPLICATION, THE CERTIFICATION OF CONSTRUCTION IS CONSIDERED
16 APPROVED.

17 (6) THE APPLICATION FEE FOR A CERTIFICATION OF CONSTRUCTION
18 UNDER THIS SECTION IS \$150.00.

19 (7) IF A PERSON WHO RECEIVES A CERTIFICATION OF CONSTRUCTION
20 UNDER THIS SECTION SUBSEQUENTLY MODIFIES THE DESIGN OR CONSTRUCTION
21 PLANS FOR THE PROPOSAL, THE PERSON SHALL SUBMIT THE MODIFIED DESIGN
22 OR CONSTRUCTION PLANS TO THE DEPARTMENT OF AGRICULTURE FOR ITS
23 APPROVAL PRIOR TO BEGINNING CONSTRUCTION. A FEE SHALL NOT BE
24 CHARGED FOR THE REVIEW OF THESE MODIFICATIONS.

25 (8) THIS SECTION DOES NOT APPLY TO THE CONSTRUCTION OF
26 FACILITIES OR STRUCTURES FOR THE OPERATION OF A LARGE CAFO OR THE
27 EXPANSION OF AN EXISTING LARGE CAFO THAT HAS RECEIVED FROM THE

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1 DEPARTMENT OF AGRICULTURE ON OR BEFORE THE EFFECTIVE DATE OF THE
2 AMENDATORY ACT THAT ADDED THIS SECTION A DETERMINATION OF
3 CONFORMANCE WITH BOTH OF THE FOLLOWING:

4 (A) GENERALLY ACCEPTED AGRICULTURAL AND MANAGEMENT PRACTICES
5 FOR SITE SELECTION AND ODOR CONTROL UNDER THE MICHIGAN RIGHT TO
6 FARM ACT, 1981 PA 93, MCL 286.471 TO 286.474.

7 (B) THE UNITED STATES DEPARTMENT OF AGRICULTURE-NATURAL
8 RESOURCE CONSERVATION SERVICE, STANDARD FOR WASTE STORAGE
9 FACILITIES THAT WAS APPLICABLE AT THE TIME OF THE CONSTRUCTION OR
10 EXPANSION.

<<(9) THE DEPARTMENT OF AGRICULTURE SHALL POST ON ITS WEBSITE A
LIST OF THE CERTIFICATES OF CONSTRUCTION THAT ARE APPROVED UNDER THIS
SECTION, INCLUDING THE FARM NAME AND ADDRESS.

11 (10)>> AS USED IN THIS SECTION, "EXPAND AN EXISTING LARGE CAFO"
12 MEANS INCREASING THE NUMBER OF ANIMALS AT A LARGE CAFO OR EXPANDING
13 MANURE STORAGE CAPACITY AT A LARGE CAFO, OR BOTH.

14 Sec. 3115. (1) The department may request the attorney general
15 to commence a civil action for appropriate relief, including a
16 permanent or temporary injunction, for a violation of this part or
17 a provision of a permit or order issued or rule promulgated under
18 this part. An action under this subsection may be brought in the
19 circuit court for the county of Ingham or for the county in which
20 the defendant is located, resides, or is doing business. If
21 requested by the defendant within 21 days after service of process,
22 the court shall grant a change of venue to the circuit court for
23 the county of Ingham or for the county in which the alleged
24 violation occurred, is occurring, or, in the event of a threat of
25 violation, will occur. The court has jurisdiction to restrain the
26 violation and to require compliance. In addition to any other
27 relief granted under this subsection, the court, except as

1 otherwise provided in this subsection, shall impose a civil fine of
2 not less than \$2,500.00 and the court may award reasonable attorney
3 fees and costs to the prevailing party. However, all of the
4 following apply:

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

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

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

13 (2) A person who at the time of the violation knew or should
14 have known that he or she discharged a substance contrary to this
15 part, or contrary to a permit or order issued or rule promulgated
16 under this part, or who intentionally makes a false statement,
17 representation, or certification in an application for or form
18 pertaining to a permit or in a notice or report required by the
19 terms and conditions of an issued permit, or who intentionally
20 renders inaccurate a monitoring device or record required to be
21 maintained by the department, is guilty of a felony and shall be
22 fined not less than \$2,500.00 or more than \$25,000.00 for each
23 violation. The court may impose an additional fine of not more than
24 \$25,000.00 for each day during which the unlawful discharge
25 occurred. If the conviction is for a violation committed after a
26 first conviction of the person under this subsection, the court
27 shall impose a fine of not less than \$25,000.00 per day and not

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

16 (3) Upon a finding by the court that the actions of a civil
17 defendant pose or posed a substantial endangerment to the public
18 health, safety, or welfare, the court shall impose, in addition to
19 the sanctions set forth in subsection (1), a fine of not less than
20 \$500,000.00 and not more than \$5,000,000.00.

21 (4) Upon a finding by the court that the actions of a criminal
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 penalties set forth in subsection (2), a fine of not less than
25 \$1,000,000.00 and, in addition to a fine, a sentence of 5 years'
26 imprisonment.

27 (5) To find a defendant civilly or criminally liable for

1 substantial endangerment under subsection (3) or (4), the court
2 shall determine that the defendant knowingly or recklessly acted in
3 such a manner as to cause a danger of death or serious bodily
4 injury and that either of the following occurred:

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

8 (b) The defendant acted in gross disregard of the standard of
9 care that any reasonable person should observe in similar
10 circumstances.

11 (6) Knowledge possessed by a person other than the defendant
12 under subsection (5) may be attributable to the defendant if the
13 defendant took affirmative steps to shield himself or herself from
14 the relevant information.

15 (7) A civil fine or other award ordered paid pursuant to this
16 section shall do both of the following:

17 (a) Be payable to the state of Michigan and credited to the
18 general fund.

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

21 (8) A lien under subsection (7)(b) ~~shall take~~ **TAKES** effect and
22 ~~have~~ **HAS** priority over all other liens and encumbrances except
23 those filed or recorded prior to the date of judgment only if
24 notice of the lien is filed or recorded as required by state or
25 federal law.

26 (9) A lien filed or recorded pursuant to subsection (8) shall
27 be terminated according to the procedures required by state or

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1 federal law within 14 days after the fine or other award ordered to
2 be paid is paid.

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

7 (11) IN ADDITION TO ANY OTHER PENALTY OR REMEDY PROVIDED UNDER
8 THIS PART, IF THE OWNER OR OPERATOR OF A LARGE CAFO IS CONVICTED OF
9 A CRIMINAL VIOLATION UNDER THIS SECTION OR FOUND RESPONSIBLE FOR A
10 CIVIL VIOLATION UNDER THIS SECTION, THE COURT MAY REVOKE A PERMIT
11 HELD BY THE OWNER OR OPERATOR OR MAY ORDER THE OWNER OR OPERATOR TO
12 COMPLY WITH THE TERMS OF THE PERMIT. <<IF A COURT REVOKES A PERMIT UNDER
THIS SUBSECTION, THE COURT SHALL ORDER ALL OF THE FOLLOWING:

(A) THAT ALL ANIMALS BE REMOVED FROM THE FACILITY.

(B) THAT THE FACILITY BE CLOSED IN AN ENVIRONMENTALLY ACCEPTABLE
MANNER, IN COMPLIANCE WITH THIS ACT AND IN COMPLIANCE WITH CONSERVATION
PRACTICE STANDARD CODE 360 (CLOSURE OF WASTE IMPOUNDMENTS), UNITED STATES
DEPARTMENT OF AGRICULTURE-NATURAL RESOURCE CONSERVATION SERVICE, NRCS
MICHIGAN FIELD OFFICE TECHNICAL GUIDE, APRIL 2005.

(C) THAT ALL BYPRODUCTS OR WASTE MATERIALS AT THE FACILITY BE
UTILIZED OR DISPOSED OF IN AN ENVIRONMENTALLY ACCEPTABLE MANNER, IN
COMPLIANCE WITH THIS ACT.

(D) THAT THE REQUIREMENTS OF SUBDIVISIONS (A) TO (C) BE PERFORMED
IN ACCORDANCE WITH A SCHEDULE ESTABLISHED BY THE COURT.

(12) THE REVOCATION OF A PERMIT UNDER SUBSECTION (11) DOES NOT
PREVENT A NEW OWNER OR OPERATOR WHO IS NOT AFFILIATED WITH THE OWNER OR
OPERATOR WHO IS SUBJECT TO THE REVOCATION UNDER SUBSECTION (11) FROM
REOPENING THE FACILITY IN COMPLIANCE WITH LAW.

(13)>> A PERMIT THAT IS REVOKED OR

13 SUBJECT TO AN ORDER UNDER <<SUBSECTION (11)>> SHALL NOT BE REISSUED OR
14 MODIFIED EXCEPT IN COMPLIANCE WITH SECTION 3112.

15 Enacting section 1. This amendatory act does not take effect
16 unless all of the following bills of the 94th Legislature are
17 enacted into law:

18 (a) Senate Bill No. 447.

19 (b) Senate Bill No. 504.