

# SENATE BILL No. 448

April 25, 2007, Introduced by Senators BROWN, BIRKHOLZ, GARCIA, JANSEN, BARCIA and KAHN and referred to the Committee on Agriculture.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 3101 and 3115 (MCL 324.3101 and 324.3115), section 3101 as amended by 2006 PA 97 and section 3115 as amended by 2004 PA 143.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 3101. As used in this part:

2           (a) "Aquatic nuisance species" means a nonindigenous species  
3 that threatens the diversity or abundance of native species or the  
4 ecological stability of infested waters, or commercial,  
5 agricultural, aquacultural, or recreational activities dependent on  
6 such waters.

7           (b) "Ballast water" means water and associated solids taken on  
8 board a vessel to control or maintain trim, draft, stability, or  
9 stresses on the vessel, without regard to the manner in which it is

1 carried.

2 (c) "Ballast water treatment method" means a method of  
3 treating ballast water and sediments to remove or destroy living  
4 biological organisms through 1 or more of the following:

5 (i) Filtration.

6 (ii) The application of biocides or ultraviolet light.

7 (iii) Thermal methods.

8 (iv) Other treatment techniques approved by the department.

9 (d) "Department" means the department of environmental  
10 quality.

11 (e) "Detroit consumer price index" means the most  
12 comprehensive index of consumer prices available for the Detroit  
13 area from the United States department of labor, bureau of labor  
14 statistics.

15 (f) "Emergency management coordinator" means that term as  
16 defined in section 2 of the emergency management act, 1976 PA 390,  
17 MCL 30.402.

18 (g) "Great Lakes" means the Great Lakes and their connecting  
19 waters, including Lake St. Clair.

20 (h) "Group 1 facility" means a facility whose discharge is  
21 described by R 323.2218 of the Michigan administrative code.

22 (i) "Group 2 facility" means a facility whose discharge is  
23 described by R 323.2210(y), R 323.2215, or R 323.2216 of the  
24 Michigan administrative code.

25 (j) "Group 3 facility" means a facility whose discharge is  
26 described by R 323.2211 or R 323.2213 of the Michigan  
27 administrative code.

1           **(K) "LARGE CAFO" MEANS THAT TERM AS DEFINED IN R 323.2103 OF**  
2 **THE MICHIGAN ADMINISTRATIVE CODE.**

3           **(L) ~~(k)~~**—"Local health department" means that term as defined in  
4 section 1105 of the public health code, 1978 PA 368, MCL 333.1105.

5           **(M) ~~(l)~~**—"Local unit" means a county, city, village, or township  
6 or an agency or instrumentality of any of these entities.

7           **(N) ~~(m)~~**—"Municipality" means this state, a county, city,  
8 village, or township, or an agency or instrumentality of any of  
9 these entities.

10           **(O) ~~(n)~~**—"National response center" means the national  
11 communications center established under the clean water act, 33 USC  
12 1251 to 1387, located in Washington, DC, that receives and relays  
13 notice of oil discharge or releases of hazardous substances to  
14 appropriate federal officials.

15           **(P) ~~(o)~~**—"Nonocean-going vessel" means a vessel that is not an  
16 ocean-going vessel.

17           **(Q) ~~(p)~~**—"Ocean-going vessel" means a vessel that operates on  
18 the Great Lakes or the St. Lawrence waterway after operating in  
19 waters outside of the Great Lakes or the St. Lawrence waterway.

20           **(R) ~~(q)~~**—"Open water disposal of contaminated dredge materials"  
21 means the placement of dredge materials contaminated with toxic  
22 substances as defined in R 323.1205 of the Michigan administrative  
23 code into the open waters of the waters of the state but does not  
24 include the siting or use of a confined disposal facility  
25 designated by the United States army corps of engineers or beach  
26 nourishment activities utilizing uncontaminated materials.

27           **(S) ~~(r)~~**—"Primary public safety answering point" means that

1 term as defined in section 102 of the emergency telephone service  
2 enabling act, 1986 PA 32, MCL 484.1102.

3 (T) ~~(s)~~—"Sediments" means any matter settled out of ballast  
4 water within a vessel.

5 (U) ~~(t)~~—"Sewage sludge" means sewage sludge generated in the  
6 treatment of domestic sewage, other than only septage or industrial  
7 waste.

8 (V) ~~(u)~~—"Sewage sludge derivative" means a product for land  
9 application derived from sewage sludge that does not include solid  
10 waste or other waste regulated under this act.

11 (W) ~~(v)~~—"Sewage sludge generator" means a person who generates  
12 sewage sludge that is applied to land.

13 (X) ~~(w)~~—"Sewage sludge distributor" means a person who  
14 applies, markets, or distributes, except at retail, a sewage sludge  
15 derivative.

16 (Y) ~~(x)~~—"St. Lawrence waterway" means the St. Lawrence river,  
17 the St. Lawrence seaway, and the gulf of St. Lawrence.

18 (Z) ~~(y)~~—"Threshold reporting quantity" means that term as  
19 defined in R 324.2002 of the Michigan administrative code.

20 (AA) ~~(z)~~—"Waters of the state" means groundwaters, lakes,  
21 rivers, and streams and all other watercourses and waters,  
22 including the Great Lakes, within the jurisdiction of this state.

23 Sec. 3115. (1) The department may request the attorney general  
24 to commence a civil action for appropriate relief, including a  
25 permanent or temporary injunction, for a violation of this part or  
26 a provision of a permit or order issued or rule promulgated under  
27 this part. An action under this subsection may be brought in the

1 circuit court for the county of Ingham or for the county in which  
2 the defendant is located, resides, or is doing business. If  
3 requested by the defendant within 21 days after service of process,  
4 the court shall grant a change of venue to the circuit court for  
5 the county of Ingham or for the county in which the alleged  
6 violation occurred, is occurring, or, in the event of a threat of  
7 violation, will occur. The court has jurisdiction to restrain the  
8 violation and to require compliance. In addition to any other  
9 relief granted under this subsection, the court, except as  
10 otherwise provided in this subsection, shall impose a civil fine of  
11 not less than \$2,500.00 and the court may award reasonable attorney  
12 fees and costs to the prevailing party. However, all of the  
13 following apply:

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

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

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

22 (2) A person who at the time of the violation knew or should  
23 have known that he or she discharged a substance contrary to this  
24 part, or contrary to a permit or order issued or rule promulgated  
25 under this part, or who intentionally makes a false statement,  
26 representation, or certification in an application for or form  
27 pertaining to a permit or in a notice or report required by the

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

25 (3) Upon a finding by the court that the actions of a civil  
26 defendant pose or posed a substantial endangerment to the public  
27 health, safety, or welfare, the court shall impose, in addition to

1 the sanctions set forth in subsection (1), a fine of not less than  
2 \$500,000.00 and not more than \$5,000,000.00.

3 (4) Upon a finding by the court that the actions of a criminal  
4 defendant pose or posed a substantial endangerment to the public  
5 health, safety, or welfare, the court shall impose, in addition to  
6 the penalties set forth in subsection (2), a fine of not less than  
7 \$1,000,000.00 and, in addition to a fine, a sentence of 5 years'  
8 imprisonment.

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

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

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

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

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

26 (a) Be payable to the state of Michigan and credited to the  
27 general fund.

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

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

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

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

16 **(11) IN ADDITION TO ANY OTHER PENALTY OR REMEDY PROVIDED UNDER**  
17 **THIS PART, IF THE OWNER OR OPERATOR OF A LARGE CAFO IS CONVICTED OF**  
18 **A CRIMINAL VIOLATION UNDER THIS SECTION OR FOUND RESPONSIBLE FOR A**  
19 **CIVIL VIOLATION UNDER THIS SECTION, THE COURT MAY REVOKE A PERMIT**  
20 **HELD BY THE OWNER OR OPERATOR OR MAY ORDER THE OWNER OR OPERATOR TO**  
21 **COMPLY WITH THE TERMS OF THE PERMIT. A PERMIT THAT IS REVOKED OR**  
22 **SUBJECT TO AN ORDER UNDER THIS SUBSECTION SHALL NOT BE REISSUED OR**  
23 **MODIFIED EXCEPT IN COMPLIANCE WITH SECTION 3112.**

24 Enacting section 1. This amendatory act does not take effect  
25 unless Senate Bill No. 447

26 of the 94th Legislature is enacted into law.