

Act No. 18  
Public Acts of 2008  
Approved by the Governor  
February 29, 2008  
Filed with the Secretary of State  
February 29, 2008  
EFFECTIVE DATE: February 29, 2008

**STATE OF MICHIGAN  
94TH LEGISLATURE  
REGULAR SESSION OF 2008**

Introduced by Senators McManus and Jacobs

# **ENROLLED SENATE BILL No. 682**

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, assessments, and donations; to provide certain appropriations; to prescribe penalties and provide remedies; and to repeal acts and parts of acts," by amending sections 1301, 8302, 8303, 8310, 8317, 8325, and 8715 (MCL 324.1301, 324.8302, 324.8303, 324.8310, 324.8317, 324.8325, and 324.8715), section 1301 as amended by 2004 PA 381, section 8302 as amended by 2002 PA 418, section 8303 as amended by 2004 PA 24, section 8310 as amended by 2004 PA 325, section 8317 as amended by 2007 PA 78, and section 8715 as amended by 2000 PA 100, and by adding section 8310a.

*The People of the State of Michigan enact:*

Sec. 1301. As used in this part:

(a) "Application period" means the period beginning when an application for a permit is received by the state and ending when the application is considered to be administratively complete under section 1305 and any applicable fee has been paid.

(b) "Department" means the department, agency, or officer authorized by this act to approve or deny an application for a particular permit.

(c) "Director" means the director of the state department authorized under this act to approve or deny an application for a particular permit or the director's designee.

(d) "Permit" means a permit or operating license required by any of the following sections or by rules promulgated thereunder, or, in the case of section 9112, by an ordinance or resolution adopted thereunder:

(i) Section 3104, floodplain alteration permit.

(ii) Section 3503, permit for use of water in mining iron ore.

(iii) Section 4105, sewerage system construction permit.

- (iv) Section 6516, vehicle testing license.
- (v) Section 6521, motor vehicle fleet testing permit.
- (vi) Section 8310, restricted use pesticide dealer license.
- (vii) Section 8310a, agricultural pesticide dealer license.
- (viii) Section 8504, license to manufacture or distribute fertilizer.
- (ix) Section 9112, local soil erosion and sedimentation control permit.
- (x) Section 11509, solid waste disposal area construction permit.
- (xi) Section 11512, solid waste disposal area operating license.
- (xii) Section 11542, municipal solid waste incinerator ash landfill operating license amendment.
- (xiii) Section 11702, septage waste servicing license or septage waste vehicle license.
- (xiv) Section 11709, septage waste site permit.
- (xv) Section 30104, inland lakes and streams project permit.
- (xvi) Section 30304, state permit for dredging, filling, or other activity in wetland.
- (xvii) Section 31509, dam construction, repair, removal permit.
- (xviii) Section 32312, flood risk, high risk, or environmental area permit.
- (xix) Section 32503, permit for dredging and filling bottomland.
- (xx) Section 35304, department permit for critical dune area use.
- (xxi) Section 36505, endangered species permit.
- (xxii) Section 41702, game bird hunting preserve license.
- (xxiii) Section 42101, dog training area permit.
- (xxiv) Section 42501, fur dealer's license.
- (xxv) Section 42702, game dealer's license.
- (xxvi) Section 44513, charter boat operating permit under reciprocal agreement.
- (xxvii) Section 44517, boat livery operating permit.
- (xxviii) Section 45503, permit to take frogs for scientific use.
- (xxix) Section 45902, game fish propagation license.
- (xxx) Section 45906, game fish import license.
- (xxxi) Section 61525, oil or gas well drilling permit.
- (xxxii) Section 62509, brine, storage, or waste disposal well drilling or conversion permit or test well drilling permit.
- (xxxiii) Section 63103a, metallic mineral mining permit.
- (xxxiv) Section 63514 or 63525, surface coal mining and reclamation permit or revision of the permit during the term of the permit, respectively.
- (xxxv) Section 63704, sand dune mining permit.
- (xxxvi) Section 72108, use permits for Michigan trailway.
- (xxxvii) Section 76109, sunken aircraft or watercraft abandoned property recovery permit.
- (xxxviii) Section 76504, Mackinac Island motor vehicle and land use permits.
- (xxxix) Section 80159, buoy or beacon permit.
- (e) "Processing deadline" means the last day of the processing period.
- (f) "Processing period" means the following time period after the close of the application period, for the following permit, as applicable:
  - (i) Twenty days for a permit under section 61525 or 62509.
  - (ii) Thirty days for a permit under section 9112.
  - (iii) Thirty days after the department consults with the underwater salvage and preserve committee created under section 76103, for a permit under section 76109.
  - (iv) Sixty days, for a permit under section 30104 for a minor project as established by rule under section 30105(7) or for a permit under section 32312.
  - (v) Sixty days or, if a hearing is held, 90 days for a permit under section 35304.

(vi) Sixty days or, if a hearing is held, 120 days for a permit under section 30104, other than a permit for a minor project as established by rule under section 30105(7), or for a permit under section 31509.

(vii) Ninety days for a permit under section 11512, a revision of a surface coal mining and reclamation permit during the term of the permit under section 63525, or a permit under section 72108.

(viii) Ninety days or, if a hearing is held, 150 days for a permit under section 3104, 30304, or 32503.

(ix) One hundred and twenty days for a permit under section 11509, 11542, 63103a, 63514, or 63704.

(x) One hundred fifty days for a permit under section 36505. However, if a site inspection or federal approval is required, the 150-day period is tolled pending completion of the inspection or receipt of the federal approval.

(xi) For any other permit, 150 days or, if a hearing is held, 90 days after the hearing, whichever is later.

Sec. 8302. (1) “Active ingredient” means an ingredient that will prevent, destroy, repel, or mitigate pests, or that will act as a plant regulator, defoliant, or desiccant or otherwise alter the behavior of plants or products.

(2) “Activity plan” means a plan for the mitigation of groundwater contamination at a specific location, including a time frame for implementation.

(3) “Adulterated” applies to a pesticide if its strength or purity is less than, or significantly greater than, the professed standard or quality as expressed on its labeling or under which it is sold; if any substance was substituted wholly or in part for a pesticide; or if a valuable constituent of the pesticide was wholly or in part abstracted.

(4) “Agricultural commodity” means a plant or part of a plant, or an animal or animal product, produced primarily for sale, consumption, propagation, or other use by human beings or animals.

(5) “Agricultural pesticide” means a pesticide that bears labeling that meets federal worker protection agricultural use requirements established in 40 CFR parts 156 and 170.

(6) “Agricultural pesticide dealer” means a person engaged in distributing, selling, or offering for sale an agricultural pesticide to the ultimate user.

(7) “Animal” means all vertebrate and invertebrate species, including, but not limited to, human beings and other mammals, birds, fish, and shellfish.

(8) “Antimicrobial pesticide” means a pesticide that is intended to disinfect, sanitize, reduce, or mitigate growth or development of microbial organisms, as defined under FIFRA.

(9) “Application season” means a time period of pesticide application, consistent with the category of application, within a calendar year.

(10) “Aquifer” means a geologic formation, a group of formations, or a part of a formation capable of yielding a significant amount of groundwater to wells or springs.

(11) “Aquifer sensitivity” means a hydrogeologic function representing the inherent abilities of materials surrounding the aquifer to attenuate the movement of pesticides into that aquifer.

(12) “Avice” means a pesticide intended for preventing, destroying, repelling, or mitigating pest birds.

(13) “Building manager” means the person who is designated as being responsible for the building’s pest management program and to whom any reporting and notification shall be made pursuant to this part or rules promulgated under this part.

(14) “Certified applicator” means an individual who is authorized under this part to use and supervise the use of a restricted use pesticide.

(15) “Commercial applicator” means a person who is required to be a registered or certified applicator under this part, or who holds himself or herself out to the public as being in the business of applying pesticides. A commercial applicator does not include a person using a pesticide for a private agricultural purpose.

(16) “Commercial building” means a portion of a building that is not a private residence, where a business is located, and that is frequented by the public.

(17) “Confirmed contaminant” means a contaminant that has been detected in at least 2 groundwater samples collected from the same groundwater sampling point at an interval of greater than 14 days.

(18) “Contaminant” means a pesticide originated chemical, radionuclide, ion, synthetic organic compound, microorganism, or waste that does not occur naturally in groundwater or that naturally occurs at a lower concentration than detected.

(19) “Contamination” means the direct or indirect introduction into groundwater of any contaminant caused in whole or in part by human activity.

Sec. 8303. (1) “Day care center” means a facility, other than a private residence, receiving 1 or more preschool or school-age children for care for periods of less than 24 hours a day, and where the parents or guardians are not

immediately available to the child, and which is licensed as a child care organization by the department of human services under 1973 PA 116, MCL 722.111 to 722.128.

(2) “Defoliant” means a substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

(3) “Department” means the department of agriculture.

(4) “Desiccant” means a substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

(5) “Device” means an instrument or contrivance, other than a firearm, which is intended for trapping, destroying, repelling, or mitigating a pest; but does not include equipment used for the application of pesticides when sold separately.

(6) “Direct supervision” means directing the application of a pesticide while being physically present during the application. However, direct supervision by a private agricultural applicator means either of the following:

(a) The private agricultural applicator is in the same field or location as an uncertified applicator, directing the application of a restricted use pesticide by the uncertified applicator.

(b) The private agricultural applicator supervises an uncertified applicator and is physically present during the initial restricted use pesticide application on an agricultural commodity or agricultural structure, including calibration, mixing, application, operator safety, and disposal.

(7) “Director” means the director of the department or his or her authorized representative.

(8) “Distribute” means to offer for sale, hold for sale, sell, barter, ship, inventory or receive for others for a period greater than 21 days, or deliver pesticides in this state.

(9) “Envelope monitoring” means monitoring of groundwater in areas adjacent to properties where groundwater is contaminated to determine the concentration and spatial distribution of the contaminant in the aquifer.

(10) “Environment” includes water, air, land, and all plants and human beings and other animals living therein, and the interrelationships that exist among them.

(11) “EPA” means the United States environmental protection agency.

(12) “FIFRA” means the federal insecticide, fungicide, and rodenticide act, 7 USC 136 to 136y.

(13) “Fungi” means all nonchlorophyll bearing thallophytes; that is, all nonchlorophyll bearing plants of a lower order than mosses and liverworts, as for example rusts, smuts, mildews, molds, yeasts, and bacteria, except those in or on other animals, and except those in or on processed foods, beverages, or pharmaceuticals.

(14) “General use pesticide” means a pesticide that is not a restricted use pesticide.

(15) “Groundwater” means underground water within the zone of saturation.

(16) “Groundwater protection rule” means a rule promulgated under this part that specifies a minimum operational standard for structures, activities, and procedures that may have contributed or may contribute to the contamination of groundwater and that specifies the standard’s scope, region of implementation, and implementation period. As used in this subsection:

(a) “Structures, activities, and procedures” includes, but is not limited to, mixing, loading, and rinse pads, application equipment, application timing, application rates, crop rotation, and pest control thresholds.

(b) “Scope” means applicability to a particular pesticide, structure, activity, or procedure or pesticides containing specific ingredients.

(c) “Region of implementation” may include specific soil types or aquifer sensitivity regions or any other geographic boundary.

(17) “Groundwater resource protection level” means a maximum contaminant level, health advisory level, or, if the EPA has not established a maximum contaminant level or a health advisory level, a level established by the director of community health using risk assessment protocol established by rule under this part.

(18) “Groundwater resource response level” means 20% of the groundwater resource protection level. If 20% of the groundwater resource protection level is less than the method detection limit, the method detection limit is the groundwater resource response level.

Sec. 8310. (1) A person shall not engage in distributing, selling, or offering for sale restricted use pesticides to the ultimate user except as authorized under an annual license for each place of business issued by the department pursuant to part 13.

(2) The applicant for a license under subsection (1) shall be the person in charge of each business location. The applicant shall demonstrate by written examination his or her knowledge of laws and rules governing the use and sale of restricted use pesticides.

(3) A person licensed under subsection (1) who operates from a business location outside this state shall continuously maintain in this state both of the following:

(a) A registered office.

(b) A resident agent, which agent may be either an individual resident in this state whose business office or residence is identical with the registered office, a domestic corporation or limited liability company, or a foreign corporation or limited liability company authorized to transact business in this state and having a business office identical with the registered office. The person licensed under subsection (1) shall file with the department the name, address, and telephone number of the resident agent.

(4) A restricted use pesticide dealer shall forward to the director a record of all sales of restricted use pesticides on forms provided by the director as required by rule. A restricted use pesticide dealer shall keep copies of the records on file for 2 years. These records are subject to inspection by an authorized agent of the director. The records shall, upon request, be supplied in summary form to other state agencies. The summary shall include the name and address of the restricted use pesticide dealer, the name and address of the purchaser, the name of the pesticide sold, and, in an emergency, the quantity sold. Information may not be made available to the public if, in the discretion of the director, release of that information could have a significant adverse effect on the competitive position of the dealer, distributor, or manufacturer.

(5) A restricted use pesticide dealer shall sell or distribute restricted use pesticides for use only by applicators certified under this part.

(6) The director may deny, suspend, or revoke a restricted use pesticide dealer's license for any violation of this part or an order issued under this part, or upon conviction under this part, FIFRA, or a state pesticide law of a reciprocating state committed by the dealer or the dealer's officer, agent, or employee. The director shall inform an applicant who is denied a restricted use pesticide dealer's license of the reasons why the license was denied.

(7) A restricted use pesticide dealer shall maintain and submit to the department records of all restricted use pesticide sales to private applicators and the intended county of application for those pesticides.

(8) Information collected in subsection (7) is confidential business information and is not subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(9) A restricted use pesticide dealer who distributes an agricultural pesticide into this state shall report to the agricultural pesticide registrant all of the following information concerning that distribution:

(a) The product name.

(b) The EPA registration number.

(c) The amount of pesticide sold or distributed.

(d) The wholesale value of pesticide sold or distributed.

(e) The date of sale or distribution.

(f) The sales or distribution invoice number.

(g) The name and address of the consignee.

Sec. 8310a. (1) A person who is not licensed under section 8310 shall not engage in distributing, selling, or offering for sale agricultural pesticides except as authorized under an annual license for each place of business issued by the department pursuant to part 13.

(2) The applicant for a license under subsection (1) shall be the individual in charge of each business location.

(3) The application for a license under subsection (1) shall be on a form provided by the director and shall contain information regarding the applicant's proposed operations and other information considered pertinent by the director.

(4) A person licensed under subsection (1) who operates from a business location outside this state shall continuously maintain in this state both of the following:

(a) A registered office.

(b) A resident agent, which agent may be either an individual resident in this state whose business office or residence is identical with the registered office, a domestic corporation or limited liability company, or a foreign corporation or limited liability company authorized to transact business in this state and having a business office identical with the registered office. The person licensed under subsection (1) shall file with the department the name, address, and telephone number of the resident agent.

(5) An agricultural pesticide dealer who distributes an agricultural pesticide into this state shall report to the agricultural pesticide registrant all of the following information concerning that distribution:

(a) The product name.

(b) The EPA registration number.

- (c) The amount of pesticide sold or distributed.
- (d) The wholesale value of pesticide sold or distributed.
- (e) The date of sale or distribution.
- (f) The sales or distribution invoice number.
- (g) The name and address of the consignee.

(6) The director may deny, suspend, or revoke an agricultural pesticide dealer's license for any violation of this part or an order issued under this part, or upon conviction under this part, FIFRA, or a state pesticide law of a reciprocating state committed by the dealer or the dealer's officer, agent, or employee. The director shall inform an applicant who is denied an agricultural pesticide dealer's license of the reasons why the license was denied.

(7) A pesticide registrant who distributes agricultural pesticides into the state is exempt from the requirements of subsection (1).

Sec. 8317. (1) An application submitted under this part shall be accompanied by the following application fee:

- (a) For a commercial applicator certification, \$75.00.
- (b) For a private agricultural applicator certification, \$50.00 until September 30, 2012 and \$10.00 after September 30, 2012.
- (c) For a commercial registered applicator, \$45.00.
- (d) For a private registered applicator, \$50.00 until September 30, 2012 and \$10.00 after September 30, 2012.

(2) Certificates for commercial applicators, private agricultural applicators, and registered applicators shall be valid for a period of time of not less than 3 years to be established by rule by the director.

(3) The license application fee for a commercial applicator license is \$100.00. The license expires annually on December 31.

(4) The registration application fee for the registration of pesticides sold, offered for sale, exposed for sale, or distributed is \$40.00 per product.

(5) The license application fee for a restricted use pesticide dealer's license is \$100.00. The license expires annually on December 31.

(6) The license application fee for an agricultural pesticide dealer's license is \$100.00. The license expires annually on December 31.

(7) Application fees submitted under this section are not refundable.

(8) The department shall deposit license and administrative fees and administrative, civil, and noncriminal fines received, as well as any payment for costs or reimbursement to the department for investigation, under this part in the agriculture licensing and inspection fees fund created in section 9 of the insect pest and plant disease act, 1931 PA 189, MCL 286.209, to be used, pursuant to appropriation, by the director in administering and carrying out those duties required by law under this part.

Sec. 8325. (1) The director shall promulgate rules for implementing this part, including, but not limited to, rules providing for the following:

- (a) The collection, examination, and reporting the results of examination of samples of pesticides or devices.
- (b) The safe handling, transportation, storage, display, distribution, and disposal of pesticides and their containers.
- (c) The designation of restricted use pesticides and agricultural pesticides for the state or for specified areas within the state. The director may include in the rule the time and conditions of sale, distribution, and use of restricted use pesticides and agricultural pesticides.
- (d) The certification and licensing of applicators and the licensing of restricted use pesticide dealers and agricultural pesticide dealers.
- (e) The maintenance of records by certified commercial applicators with respect to applications of restricted use pesticides.
- (f) Good practice in the use of pesticides.
- (g) Notification or posting, or both, designed to inform persons entering certain public or private buildings or other areas where the application of a pesticide, other than a general use ready-to-use pesticide, has occurred.
- (h) Use of a pesticide in a manner consistent with its labeling including adequate supervision of noncertified applicators if appropriate.
- (i) Prenotification by the building manager upon request for affected persons regarding the application of a pesticide at daycare centers and schools.

- (j) Responsibility of a building manager to post signs provided to him or her by a commercial applicator.
  - (k) Designation of posted school bus stops as sensitive areas.
  - (l) The establishing of a schedule of civil fines for violation of local ordinances as described in section 8328(3).
- (2) By December 27, 1989, the director shall submit rules to the joint committee on administrative rules pertaining to all of the following:
- (a) The development of a training program for applicators who apply pesticides for private agricultural purposes on the use of appropriate procedures for the application of pesticides; safety procedures for pesticide application; clothing and protective equipment for pesticide application; the detection of common symptoms of pesticide poisoning; the means of obtaining emergency medical treatment; hazards posed by pesticides to workers, the public health, and the environment; specific categories of pesticides; and the requirements of applicable laws, rules, and labeling.
  - (b) The development of training programs for integrated pest management systems in schools, public buildings, and health care facilities.
  - (c) The duty of commercial applicators to inform customers of potential risks and benefits associated with the application of pesticides.
- (3) By June 27, 1990, the director shall submit rules to the joint committee on administrative rules pertaining to the protection of agriculture employees who hand harvest agricultural commodities regarding all of the following:
- (a) The establishment of field reentry periods after the application of agricultural pesticides.
  - (b) The posting and notification of areas where pesticides have been applied.
  - (c) The use of protective clothing, safety devices, hand washing, or other methods of protection from pesticide exposure.
  - (d) Notification of agricultural workers of poison treatment facilities.
- (4) If the EPA at any time adopts and publishes agricultural worker protection standards, the federal standards shall supersede rules promulgated under subsection (3).
- (5) By December 27, 1989, the director shall submit rules to the joint committee on administrative rules. These rules shall include all of the following:
- (a) Minimum standards of competency and experience or expertise for trainers of certified and registered applicators.
  - (b) The development of a training program for applicators on the use of appropriate procedures for the application of pesticides; safety procedures for pesticide application; clothing and protective equipment for pesticide application; the detection of common symptoms of pesticide poisoning; the means of obtaining emergency medical treatment; hazards posed by pesticides to workers, the public health, and the environment; specific categories of pesticides; and the requirements of applicable laws, rules, and labeling.
  - (c) The number of directly supervised application hours required before a registered applicator may apply each category of restricted use pesticide without direct supervision.
- Sec. 8715. (1) In addition to the fees provided for in part 83, a registrant shall pay an annual groundwater protection fee for each product to be registered. The specialty pesticide groundwater protection fee is \$100.00 per product. Groundwater protection fees for all other pesticides are 0.75% of the wholesale value of the previous registration year's product sales for use in this state, with a \$150.00 minimum groundwater protection fee. The minimum groundwater protection fee is due in the office of the director before July 1. A sales based groundwater protection fee greater than the \$150.00 minimum is due in the office of the director before October 1 of the following registration year.
- (2) An additional late fee of \$100.00 shall be paid by the registrant for each pesticide if the pesticide registration is a renewal registration and the minimum groundwater protection fee is received by the department after June 30.
- (3) A person required to pay a specialty fertilizer or soil conditioner registration fee under section 8505 shall pay an additional \$100.00 groundwater protection fee for each brand and product name of each grade registered.
- (4) All fertilizer manufacturers or distributors licensed under part 85, except specialty fertilizer and soil conditioner registrants, shall pay an additional groundwater protection fee of 1-1/2 cents per percent of nitrogen in the fertilizer for each ton of fertilizer sold.
- (5) The fees collected under this part, including any interest or dividends earned, shall be transmitted to the state treasurer, who shall credit the money received to the fund.
- (6) Upon the expenditure or appropriation of money raised in this section for any purpose other than those specifically listed in this part, authorization to collect fees in this section shall be suspended until the money expended or appropriated for purposes other than those listed in this part are returned to the fund.
- (7) This section is repealed December 31, 2013.

This act is ordered to take immediate effect.

*Carol Morey Viventi*

Secretary of the Senate

*Richard J. Brown*

Clerk of the House of Representatives

Approved \_\_\_\_\_

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Governor