

SUBSTITUTE FOR
HOUSE BILL NO. 5223

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 3118 and 3120 (MCL 324.3118 and 324.3120),
section 3118 as amended by 2008 PA 2 and section 3120 as added by
2004 PA 91.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3118. (1) Except as otherwise provided in this section,
2 until October 1, ~~2009~~—2011, the department shall collect storm
3 water discharge fees from persons who apply for or have been issued
4 storm water discharge permits as follows:

5 (a) A 1-time fee of \$400.00 is required for a permit related
6 solely to a site of construction activity for each permitted site.
7 The fee shall be submitted by the permit applicant with his or her
8 application for an individual permit or for a certificate of
9 coverage under a general permit. For a permit by rule, the fee

1 shall be submitted by the construction site permittee along with
2 his or her notice of coverage. A person needing more than 1 permit
3 may submit a single payment for more than 1 permit and receive
4 appropriate credit. Payment of the fee under this subdivision or
5 verification of prepayment is a necessary part of a valid permit
6 application or notice of coverage under a permit by rule.

7 (b) An annual fee of \$260.00 is required for a permit related
8 solely to a storm water discharge associated with industrial
9 activity or from a commercial site for which the department
10 determines a permit is needed.

11 (c) An annual fee of \$500.00 is required for a permit for a
12 municipal separate storm sewer system, unless the permit is issued
13 to a city, a village, a township, or a county or is a single permit
14 authorization for municipal separate storm sewer systems in
15 multiple locations statewide.

16 (d) An annual fee for a permit for a municipal separate storm
17 sewer system issued to a city, village, or township shall be
18 determined by its population in an urbanized area as defined by the
19 United States bureau of the census. The fee shall be based on the
20 latest available decennial census as follows:

21 (i) For a population of 1,000 people or fewer, the annual fee
22 is \$500.00.

23 (ii) For a population of more than 1,000 people, but fewer than
24 3,001 people, the annual fee is \$1,000.00.

25 (iii) For a population of more than 3,000 people, but fewer than
26 10,001 people, the annual fee is \$2,000.00.

27 (iv) For a population of more than 10,000 people, but fewer

1 than 30,001 people, the annual fee is \$3,000.00.

2 (v) For a population of more than 30,000 people, but fewer
3 than 50,001 people, the annual fee is \$4,000.00.

4 (vi) For a population of more than 50,000 people, but fewer
5 than 75,001 people, the annual fee is \$5,000.00.

6 (vii) For a population of more than 75,000 people, but fewer
7 than 100,001 people, the annual fee is \$6,000.00.

8 (viii) For a population of more than 100,000 people, the annual
9 fee is \$7,000.00.

10 (e) An annual fee of \$3,000.00 is required for a permit for a
11 municipal separate storm sewer system issued to a county.

12 (f) An annual fee for a single municipal separate storm sewer
13 systems permit authorizing a state or federal agency to operate
14 municipal separate storm sewer systems in multiple locations
15 statewide shall be determined in accordance with a memorandum of
16 understanding between that state or federal agency and the
17 department and shall be based on the projected needs by the
18 department to administer the permit.

19 (2) A storm water discharge permit is not required for a
20 municipality that does not own or operate a separate storm sewer
21 system. The department shall not collect storm water discharge fees
22 under ~~subsection (1)~~ **THIS SECTION** from a municipality that does not
23 own or operate a separate storm sewer system.

24 (3) ~~The permit~~ **PERMIT** fees identified in ~~subsection (1)~~
25 **REQUIRED UNDER THIS SECTION** are nonrefundable.

26 (4) A person possessing a permit not related solely to a site
27 of construction activity as of January 1 shall be assessed a fee.

1 The department shall notify those persons of their fee assessments
2 by February 1. Payment shall be postmarked no later than March 15.
3 Failure by the department to send a fee assessment notification by
4 the deadline, or failure of a person to receive a fee assessment
5 notification, does not relieve that person of his or her obligation
6 to pay the fee. If the department does not meet the February
7 deadline for sending the fee assessment, the fee assessment is due
8 not later than 45 days after ~~receiving~~**THE PERMITTEE RECEIVES** a fee
9 notification.

10 (5) If a storm water permit is issued for a drainage district,
11 the drainage district is responsible for the applicable fee under
12 this section.

13 (6) The department shall assess interest on all fee payments
14 submitted under this section after the due date. The permittee
15 shall pay an additional amount equal to 0.75% of the payment due
16 for each month or portion of a month the payment remains past due.

17 (7) The department shall forward all fees and interest
18 payments collected under this section to the state treasurer for
19 deposit into the fund.

20 (8) The department shall make payment of the required fee
21 assessed under this section a condition of issuance or reissuance
22 of a permit not related solely to a site of construction activity.

23 (9) In addition to any other penalty provided in this part, if
24 a person fails to pay the fee required under this section by its
25 due date, the person is in violation of this part and the
26 department may undertake enforcement actions as authorized under
27 this part.

1 (10) The attorney general may bring an action to collect
2 overdue fees and interest payments imposed under this section.

3 (11) If the permit is for a municipal separate storm sewer
4 system and the population served by that system is different than
5 the latest decennial census, the permittee may appeal the annual
6 fee determination and submit written verification of actual
7 population served by the municipal separate storm sewer system.

8 (12) A person who wishes to appeal either a fee or a penalty
9 assessed under this section is limited to an administrative appeal,
10 in accordance with section 631 of the revised judicature act of
11 1961, 1961 PA 236, MCL 600.631. The appeal shall be filed within 30
12 days of the department's fee notification under subsection (4).

13 (13) As used in this section and section 3119:

14 (a) "Certificate of coverage" means a document issued by the
15 department that authorizes a discharge under a general permit.

16 (b) "Clean water act" means the federal water pollution
17 control act, 33 USC 1251 to 1387.

18 (c) "Construction activity" means a human-made earth change or
19 disturbance in the existing cover or topography of land that is 5
20 acres or more in size, for which a national permit is required
21 pursuant to 40 CFR 122.26(a), and which is described as a
22 construction activity in 40 CFR 122.26(b)(14)(x). Construction
23 activity includes clearing, grading, and excavating activities.
24 Construction activity does not include the practice of clearing,
25 plowing, tilling soil, and harvesting for the purpose of crop
26 production.

27 (d) "Fee" means a storm water discharge fee authorized under

1 this section.

2 (e) "Fund" means the storm water fund created in section 3119.

3 (f) "General permit" means a permit issued authorizing a
4 category of similar discharges.

5 (g) "Individual permit" means a site-specific permit.

6 (h) "Municipal separate storm sewer system" means all separate
7 storm sewers that are owned or operated by the United States or a
8 state, city, village, township, county, district, association, or
9 other public body created by or pursuant to state law, having
10 jurisdiction over disposal of sewage, industrial wastes, storm
11 water, or other wastes, including special districts under state
12 law, such as a sewer district, flood control district, or drainage
13 district or similar entity, or a designated or approved management
14 agency under section 208 of the clean water act, 33 USC 1288, that
15 discharges to waters of the state. Municipal separate storm sewer
16 system includes systems similar to separate storm sewer systems in
17 municipalities, such as systems at military bases, large hospital
18 or prison complexes, and highways and other thoroughfares.

19 Municipal separate storm sewer system does not include separate
20 storm sewers in very discrete areas, such as individual buildings.

21 (i) "Notice of coverage" means a notice that a person engaging
22 in construction activity agrees to comply with a permit by rule for
23 that activity.

24 (j) "Permit" or "storm water discharge permit" means a permit
25 authorizing the discharge of wastewater or any other substance to
26 surface waters of the state under the national pollutant discharge
27 elimination system, pursuant to the clean water act or this part

1 and the rules and regulations promulgated under that act or this
2 part.

3 (k) "Public body" means the United States, the state of
4 Michigan, a city, village, township, county, school district,
5 public college or university, or single purpose governmental
6 agency, or any other body ~~which~~**THAT** is created by federal or state
7 statute or law.

8 (l) "Separate storm sewer system" means a system of drainage,
9 including, but not limited to, roads, catch basins, curbs, gutters,
10 parking lots, ditches, conduits, pumping devices, or man-made
11 channels, ~~which~~**THAT** has the following characteristics:

12 (i) The system is not a combined sewer where storm water mixes
13 with sanitary wastes.

14 (ii) The system is not part of a publicly owned treatment
15 works.

16 (m) "Storm water" means storm water runoff, snowmelt runoff,
17 and surface runoff and drainage.

18 (n) "Storm water discharge associated with industrial
19 activity" means a point source discharge of storm water from a
20 facility ~~which~~**THAT** is defined as an industrial activity under 40
21 CFR 122.26(b)(14)(i-ix and xi).

22 Sec. 3120. (1) Until October 1, ~~2009~~**2011**, an application for
23 a new permit, a reissuance of a permit, or a modification of an
24 existing permit under this part authorizing a discharge into
25 surface water, other than a storm water discharge, shall be
26 accompanied by an application fee as follows:

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

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

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

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

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

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

19 (5) Until October 1, ~~2009~~2011, a person who receives a permit
20 under this part authorizing a discharge into surface water, other
21 than a stormwater discharge, is subject to an annual permit fee as
22 follows:

23 (a) For an industrial or commercial facility that is an EPA
24 major facility, \$8,700.00.

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

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

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

2 (iii) For an individual permit for a low-flow facility,
3 \$1,650.00.

4 (iv) For an individual permit for a high-flow facility,
5 \$3,650.00.

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

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

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

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

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

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

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

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

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

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

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

26 (e) For a municipal facility that is a CSO facility,
27 \$6,000.00.

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

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

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

8 (ii) The facility is an EPA major facility that is not a
9 farmers' cooperative corporation, in which case the fee ~~would be~~ **IS**
10 \$8,700.00.

11 (h) For a facility that holds a permit issued under this part
12 but has no discharge and the facility is connected to and is
13 authorized to discharge only to a municipal wastewater treatment
14 system, an annual permit maintenance fee of \$100.00. However, if a
15 facility does have a discharge or at some point is no longer
16 connected to a municipal wastewater treatment system, the annual
17 permit fee shall be the appropriate fee as otherwise provided in
18 this subsection.

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

24 (7) The department shall send invoices for annual permit fees
25 under subsection (5) to all permit holders by December 1 of each
26 year. The fee shall be based on the status of the facility as of
27 October 1 of that year. A person subject to an annual permit fee

1 shall pay the fee not later than January 15 of each year. Failure
2 by the department to send an invoice by the deadline, or failure of
3 a person to receive an invoice, does not relieve that person of his
4 or her obligation to pay the annual permit fee. If the department
5 does not meet the December 1 deadline for sending invoices, the
6 annual permit fee is due not later than 45 days after receiving an
7 invoice. The department shall forward annual permit fees received
8 under this section to the state treasurer for deposit into the
9 national pollutant discharge elimination system fund created in
10 section 3121.

11 (8) The department shall assess a penalty on all annual permit
12 fee payments submitted under this section after the due date. The
13 penalty shall be an amount equal to 0.75% of the payment due for
14 each month or portion of a month the payment remains past due.

15 (9) Following payment of an annual permit fee, if a permittee
16 wishes to challenge its annual permit fee under this section, the
17 owner or operator shall submit the challenge in writing to the
18 department. The department shall not process the challenge unless
19 it is received by the department by March 1 of the year the payment
20 is due. A challenge shall identify the facility and state the
21 grounds upon which the challenge is based. Within 30 calendar days
22 after receipt of the challenge, the department shall determine the
23 validity of the challenge and provide the permittee with
24 notification of a revised annual permit fee and a refund, if
25 appropriate, or a statement setting forth the reason or reasons why
26 the annual permit fee was not revised. If the owner or operator of
27 a facility desires to further challenge its annual permit fee, the

1 owner or operator of the facility has an opportunity for a
2 contested case hearing as provided for under the administrative
3 procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

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

6 ~~(11) Within 30 days after the effective date of the amendatory~~
7 ~~act that added this section, the director of the department shall~~
8 ~~notify each person holding a permit under this part authorizing a~~
9 ~~discharge into surface water, other than a storm water permit, of~~
10 ~~the requirements of this section.~~

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

12 (a) "Agricultural purpose" means the agricultural production
13 or processing of those plants and animals useful to human beings
14 produced by agriculture and includes, but is not limited to,
15 forages and sod crops, grains and feed crops, field crops, dairy
16 animals and dairy products, poultry and poultry products, cervidae,
17 livestock, including breeding and grazing, equine, fish and other
18 aquacultural products, bees and bee products, berries, herbs,
19 fruits, vegetables, flowers, seeds, grasses, nursery stock, trees
20 and tree products, mushrooms, and other similar products, or any
21 other product, as determined by the commission of agriculture, that
22 incorporates the use of food, feed, fiber, or fur. Agricultural
23 purpose includes an operation or facility that produces wine.

24 (b) "Combined sewer overflow" means a discharge from a
25 combined sewer system that occurs when the flow capacity of the
26 combined sewer system is exceeded at a point prior to the headworks
27 of a publicly owned treatment works during wet weather conditions.

1 (c) "Combined sewer system" means a sewer designed and used to
2 convey both storm water runoff and sanitary sewage, and ~~which~~ **THAT**
3 contains lawfully installed regulators and control devices that
4 allow for delivery of sanitary flow to treatment during dry weather
5 periods and divert storm water and sanitary sewage to surface
6 waters during storm flow periods.

7 (d) "CSO facility" means a facility whose discharge is solely
8 a combined sewer overflow.

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

12 (f) "EPA minor facility" means a facility that is not an EPA
13 major facility.

14 (g) "Farmers' cooperative corporation" means a farmers'
15 cooperative corporation organized within the limitations of section
16 98 of 1931 PA 327, MCL 450.98.

17 (h) "General permit" means a permit suitable for use at
18 facilities meeting eligibility criteria as specified in the permit.
19 With a general permit, the discharge from a specific facility is
20 acknowledged through a certificate of coverage issued to the
21 facility.

22 (i) "High-flow facility" means a facility that discharges 1
23 MGD or more.

24 (j) "Individual permit" means a permit developed for a
25 particular facility, taking into account that facility's specific
26 characteristics.

27 (k) "Industrial or commercial facility" means a facility that

1 is not a municipal facility.

2 (l) "Low-flow facility" means a facility that discharges less
3 than 1 MGD.

4 (m) "MGD" means 1,000,000 gallons per day.

5 (n) "Municipal facility" means a facility that is designed to
6 collect or treat sanitary wastewater, and is either publicly or
7 privately owned, and serves a residential area or a group of
8 municipalities.

9 (o) "Wastewater stabilization lagoon" means a type of
10 treatment system constructed of ponds or basins designed to
11 receive, hold, and treat sanitary wastewater for a predetermined
12 amount of time ~~Wastewater is treated~~ through a combination of
13 physical, biological, and chemical processes.