

**SUBSTITUTE FOR
SENATE BILL NO. 436**

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 1307 and 1311 (MCL 324.1307 and 324.1311), as
added by 2004 PA 325, and by adding section 1313.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1307. (1) By the processing deadline, the department
2 shall approve or deny an application for a permit. If requested by
3 the permit applicant, the department may extend the processing
4 period for a permit by not more than 20%.

5 (2) Approval of an application for a permit may be granted
6 with conditions or modifications necessary to achieve compliance
7 with the part or parts of this act under which the permit is
8 issued.

9 (3) ~~(2)~~—A denial of an application for a permit shall include
10 an explanation of the reasons for denial and make specific

1 reference to provisions of this act or rules promulgated under this
2 act providing the basis for denial.

3 (4) ~~(3)~~—Except for permits described in subsection ~~(4)~~—(5), if
4 the department fails to satisfy the requirements of subsection (1)
5 with respect to an application for a permit, the department shall
6 pay the applicant an amount equal to ~~15%~~—50% of the greater of the
7 following, as applicable:

8 (a) The amount of the application fee for that permit.

9 (b) If an assessment or other fee is charged on an annual or
10 other periodic basis by the department to a person holding the
11 permit for which the application was submitted, the amount of the
12 first periodic charge of that assessment or other fee for that
13 permit.

14 (5) ~~(4)~~—If the department fails to satisfy the requirements of
15 subsection (1) with respect to a permit ~~under~~ **REQUIRED BY** section
16 11509, 11512, or ~~30307~~—**30304**, the application shall be considered
17 to be approved and the department shall be considered to have made
18 any determination required for approval.

19 (6) ~~(5)~~—The failure of the department to satisfy the
20 requirements of subsection (1) or the fact that the department is
21 required to make a payment under subsection ~~(3)~~—(4) or is
22 considered to have approved a permit under subsection ~~(4)~~—(5) shall
23 not be used by the department as the basis for discriminating
24 against the applicant. If the department is required to make a
25 payment under subsection ~~(3)~~—(4), the application shall be
26 processed in sequence with other applications for the same type of
27 permit, based on the date on which the processing period began,

1 unless the director determines on an application-by-application
2 basis that the public interest is best served by processing in a
3 different order.

4 (7) ~~(6)~~—If the department fails to satisfy the requirements of
5 subsection (1), the director shall notify the appropriations
6 committees of the senate and house of representatives of the
7 failure. The notification shall be in writing and shall include
8 both of the following:

9 (a) An explanation of the reason for the failure.

10 (b) A statement of the amount the department was required to
11 pay the applicant under subsection ~~(3)~~—(4) or a statement that the
12 department was required to consider the application to be approved
13 under subsection ~~(4)~~—(5), as applicable.

14 Sec. 1311. The director of the department shall submit a
15 report by December 1, 2005 and each year thereafter to the standing
16 committees and appropriations subcommittees of the senate and house
17 of representatives with primary responsibility for issues under the
18 jurisdiction of that department. The department shall post the
19 current report on its website. The report shall include all of the
20 following information for each type of permit for the preceding
21 fiscal year:

22 (a) The number of applications for permits the department
23 received.

24 (b) The number of applications approved, the number of
25 applications approved by the processing deadline, the number of
26 applications approved after the processing deadline, and the
27 average time for the department to determine administrative

1 completeness and to approve or disapprove applications.

2 (c) The number of applications denied, the number of
3 applications denied by the processing deadline, and the number of
4 applications denied after the processing deadline.

5 (d) The number of applications approved or denied after the
6 processing deadline that, based on the director's determination of
7 the public interest, were not processed in sequence as otherwise
8 required by section ~~1307(5)~~ **1307(6)**.

9 (e) The number of applications that were not administratively
10 complete when received.

11 (f) The amount of money refunded and discounts granted under
12 section 1307.

13 (g) The number of applications processed as provided in
14 section 1309.

15 **SEC. 1313. (1) A PERSON MAY FILE AN APPLICATION FOR A PERMIT**
16 **OR FILE A PROPOSED REMEDIAL ACTION PLAN OR CORRECTIVE ACTION PLAN**
17 **WITH A LICENSED PROFESSIONAL ENGINEER APPROVED BY THE DEPARTMENT AS**
18 **COMPETENT TO PROCESS THAT TYPE OF PERMIT, REMEDIAL ACTION PLAN, OR**
19 **CORRECTIVE ACTION PLAN. THE LICENSED PROFESSIONAL ENGINEER SHALL**
20 **NOT BE AN EMPLOYEE OF THE PERMIT APPLICANT OR THE PERSON PROPOSING**
21 **THE REMEDIAL ACTION PLAN OR CORRECTIVE ACTION PLAN. ANY FEE CHARGED**
22 **TO THE APPLICANT BY THE LICENSED PROFESSIONAL ENGINEER FOR REVIEW**
23 **OF A PERMIT APPLICATION IS IN ADDITION TO THE DEPARTMENT'S PERMIT**
24 **APPLICATION FEE AS PROVIDED UNDER SUBSECTION (3).**

25 **(2) THE LICENSED PROFESSIONAL ENGINEER SHALL REVIEW THE PERMIT**
26 **APPLICATION OR PROPOSED REMEDIAL ACTION PLAN OR CORRECTIVE ACTION**
27 **PLAN BASED ON THE RELEVANT STANDARDS SET FORTH IN THIS ACT AND**

1 RULES PROMULGATED UNDER THIS ACT. IF THE LICENSED PROFESSIONAL
2 ENGINEER DETERMINES THAT THE PERMIT APPLICATION OR PROPOSED
3 REMEDIAL ACTION PLAN OR CORRECTIVE ACTION PLAN MEETS THE RELEVANT
4 STANDARDS, THE LICENSED PROFESSIONAL ENGINEER SHALL REPORT TO THE
5 DEPARTMENT AND THE PERMIT APPLICANT OR PERSON PROPOSING THE
6 REMEDIAL ACTION PLAN OR CORRECTIVE ACTION PLAN ITS FINDINGS AND
7 RECOMMENDATIONS, IN WRITING.

8 (3) NOTWITHSTANDING THE PROVISIONS OF ANY OTHER SECTION OF
9 THIS ACT, THE DEPARTMENT SHALL PROCESS THE PERMIT APPLICATION OR
10 PROPOSED REMEDIAL ACTION PLAN OR CORRECTIVE ACTION PLAN WITHIN 21
11 DAYS AFTER RECEIPT OF THE PERMIT APPLICATION OR PROPOSED REMEDIAL
12 ACTION PLAN OR CORRECTIVE ACTION PLAN, THE LICENSED PROFESSIONAL
13 ENGINEER'S FINDINGS AND RECOMMENDATIONS UNDER SUBSECTION (2), AND
14 ANY FEE, WHICH SHALL BE 50% OF THE FEE OTHERWISE ESTABLISHED BY
15 THIS ACT OR RULES PROMULGATED UNDER THIS ACT. HOWEVER, IF, PURSUANT
16 TO THIS ACT OR RULES PROMULGATED UNDER THIS ACT, THE DEPARTMENT
17 CONDUCTS A HEARING OR CONSULTATION ON THE PERMIT APPLICATION OR
18 PROPOSED REMEDIAL ACTION PLAN OR CORRECTIVE ACTION PLAN, THE
19 DEPARTMENT SHALL PROCESS THE PERMIT APPLICATION OR PROPOSED
20 REMEDIAL ACTION PLAN OR CORRECTIVE ACTION PLAN WITHIN 21 DAYS AFTER
21 THE HEARING OR CONSULTATION. AFTER SUCH A HEARING OR CONSULTATION,
22 A DEADLINE UNDER THIS SUBSECTION MAY BE EXTENDED IF AGREED TO BY
23 THE PERMIT APPLICANT OR PERSON PROPOSING A REMEDIAL ACTION PLAN OR
24 CORRECTIVE ACTION PLAN. AFTER SUCH A HEARING OR CONSULTATION, THE
25 DEPARTMENT MAY REQUEST BUT SHALL NOT REQUIRE FROM THE PERMIT
26 APPLICANT OR PERSON PROPOSING A REMEDIAL ACTION PLAN OR CORRECTIVE
27 ACTION PLAN ANY ADDITIONAL INFORMATION PERTAINING TO THE PERMIT

1 APPLICATION OR PROPOSED REMEDIAL ACTION PLAN OR CORRECTIVE ACTION
2 PLAN. IF THE DEPARTMENT FAILS TO PROCESS A PERMIT APPLICATION OR
3 PROPOSED REMEDIAL ACTION PLAN OR CORRECTIVE ACTION PLAN BY THE
4 DEADLINE REQUIRED BY THIS SUBSECTION, SUBJECT TO ANY EXTENSION
5 UNDER THIS SUBSECTION, THE PERMIT APPLICATION OR PROPOSED REMEDIAL
6 ACTION PLAN OR CORRECTIVE ACTION PLAN SHALL BE CONSIDERED TO BE
7 APPROVED.

8 (4) IF THE DEPARTMENT DENIES A PERMIT APPLICATION OR REJECTS A
9 PROPOSED REMEDIAL ACTION PLAN OR CORRECTIVE ACTION PLAN CONTRARY TO
10 THE RECOMMENDATION OF A LICENSED PROFESSIONAL ENGINEER UNDER THIS
11 SECTION, WITHIN 15 DAYS AFTER THE DENIAL OR REJECTION, THE
12 DEPARTMENT SHALL PROVIDE TO THE PERMIT APPLICANT OR THE PERSON
13 PROPOSING THE REMEDIAL ACTION PLAN OR CORRECTIVE ACTION PLAN A
14 WRITTEN EXPLANATION OF THE REASONS FOR DENIAL INCLUDING CITATIONS
15 TO SPECIFIC STATUTORY PROVISIONS OR RULES PROMULGATED UNDER THIS
16 ACT PROVIDING THE BASIS FOR DENIAL OR REJECTION. THE EXPLANATION
17 SHALL BE SIGNED BY THE DIRECTOR. THE LICENSED PROFESSIONAL ENGINEER
18 WHO PREPARED FINDINGS AND RECOMMENDATIONS ON THE PERMIT APPLICATION
19 OR PROPOSED REMEDIAL ACTION PLAN OR CORRECTIVE ACTION PLAN HAS
20 STANDING IN AN ACTION TO APPEAL THE DEPARTMENT'S GRANT OR DENIAL OF
21 THE PERMIT APPLICATION OR APPROVAL OR REJECTION OF THE PROPOSED
22 REMEDIAL ACTION PLAN OR CORRECTIVE ACTION PLAN.

23 (5) WITHIN 270 DAYS AFTER THE EFFECTIVE DATE OF THE AMENDATORY
24 ACT THAT ADDED THIS SECTION, THE DEPARTMENT SHALL PROMULGATE RULES
25 TO IMPLEMENT THIS SECTION.

26 (6) THE DEPARTMENT SHALL MAINTAIN A LIST OR LISTS OF LICENSED
27 PROFESSIONAL ENGINEERS ELIGIBLE TO CONDUCT REVIEWS OF PERMIT

1 APPLICATIONS OR PROPOSED REMEDIAL ACTION PLANS OR CORRECTIVE ACTION
2 PLANS UNDER THIS SECTION. THE DEPARTMENT SHALL POST EACH LIST ON
3 ITS WEBSITE AND UPDATE EACH LIST AT LEAST EVERY 30 DAYS.

4 (7) THE DIRECTOR SHALL SUBMIT A REPORT BY DECEMBER 1, 2010 AND
5 EACH YEAR THEREAFTER TO THE STANDING COMMITTEES AND APPROPRIATIONS
6 SUBCOMMITTEES OF THE SENATE AND HOUSE OF REPRESENTATIVES WITH
7 PRIMARY RESPONSIBILITY FOR ENVIRONMENTAL ISSUES. THE DEPARTMENT
8 SHALL POST THE CURRENT REPORT ON ITS WEBSITE. THE REPORT SHALL
9 INCLUDE ALL OF THE FOLLOWING INFORMATION FOR EACH TYPE OF PERMIT
10 APPLICATION OR PROPOSED REMEDIAL ACTION PLAN OR CORRECTIVE ACTION
11 PLAN THAT THE DEPARTMENT RECEIVED WITH FINDINGS AND RECOMMENDATIONS
12 OF A LICENSED PROFESSIONAL ENGINEER UNDER THIS SECTION FOR THE
13 PRECEDING FISCAL YEAR:

14 (A) THE NUMBER RECEIVED.

15 (B) THE NUMBER APPROVED, THE NUMBER APPROVED BY THE DEADLINE
16 UNDER SUBSECTION (3), THE NUMBER APPROVED BECAUSE OF FAILURE TO
17 MEET THE DEADLINE UNDER SUBSECTION (3), AND THE AVERAGE TIME FOR
18 THE DEPARTMENT TO APPROVE OR DISAPPROVE THE PERMIT APPLICATIONS OR
19 PROPOSED REMEDIAL ACTION PLANS OR CORRECTIVE ACTION PLANS.

20 (C) THE NUMBER DENIED.

21 (8) NOTWITHSTANDING SECTION 1301, AS USED IN THIS SECTION:

22 (A) "CORRECTIVE ACTION PLAN" MEANS A CORRECTIVE ACTION PLAN AS
23 DESCRIBED IN SECTION 21309A.

24 (B) "DEPARTMENT" MEANS THE DEPARTMENT OF ENVIRONMENTAL
25 QUALITY.

26 (C) "DIRECTOR" MEANS THE DIRECTOR OF THE DEPARTMENT.

27 (D) "PERMIT" MEANS A PERMIT REQUIRED BY ANY OF THE FOLLOWING

1 SECTIONS OR RULES PROMULGATED THEREUNDER:

2 (i) SECTION 3104, FLOODPLAIN ALTERATION PERMIT.

3 (ii) SECTION 3112 OR 3113, PERMIT TO DISCHARGE INTO WATERS OF
4 THIS STATE.

5 (iii) SECTION 5505, AIR POLLUTION PERMIT TO INSTALL OR OPERATE.

6 (iv) SECTION 30104, INLAND LAKES AND STREAMS PROJECT PERMIT.

7 (v) SECTION 30304, WETLAND ACTIVITY PERMIT.

8 (vi) SECTION 31509, DAM CONSTRUCTION, REPAIR, OR REMOVAL
9 PERMIT.

10 (vii) SECTION 32503, BOTTOMLAND DREDGING OR SPOILS PERMIT.

11 (viii) SECTION 32723, WATER WITHDRAWAL PERMIT.

12 (ix) SECTION 35304, CRITICAL DUNE AREA USE PERMIT.

13 (E) "REMEDIAL ACTION PLAN" MEANS THAT TERM AS DEFINED IN
14 SECTION 20101.