

HOUSE BILL No. 5223

August 4, 2009, Introduced by Rep. Bennett and referred to the Committee on Appropriations.

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,~~ the department shall collect storm water
3 discharge fees from persons who apply for or have been issued storm
4 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

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

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

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

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

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

25 (ii) For a population of more than 1,000 people, but fewer than
26 3,001 people, the annual fee is \$1,000.00.

27 (iii) For a population of more than 3,000 people, but fewer than

1 10,001 people, the annual fee is \$2,000.00.

2 (iv) For a population of more than 10,000 people, but fewer
3 than 30,001 people, the annual fee is \$3,000.00.

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

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

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

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

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

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

21 **(2) BEGINNING IN THE STATE FISCAL YEAR ENDING ON SEPTEMBER 30,**
22 **2010, THE FEES PROVIDED IN SUBSECTION (1) SHALL BE ANNUALLY**
23 **ADJUSTED FOR INFLATION EACH STATE FISCAL YEAR USING THE DETROIT**
24 **CONSUMER PRICE INDEX. AN ADJUSTMENT UNDER THIS SUBSECTION SHALL BE**
25 **ROUNDED TO THE NEAREST DOLLAR.**

26 **(3) ~~(2)~~**A storm water discharge permit is not required for a
27 municipality that does not own or operate a separate storm sewer

1 system. The department shall not collect storm water discharge fees
2 under ~~subsection (1)~~ **THIS SECTION** from a municipality that does not
3 own or operate a separate storm sewer system.

4 (4) ~~(3) The permit~~ **PERMIT** fees identified in ~~subsection (1)~~
5 **REQUIRED UNDER THIS SECTION** are nonrefundable.

6 (5) ~~(4)~~ A person possessing a permit not related solely to a
7 site of construction activity as of January 1 shall be assessed a
8 fee. The department shall notify those persons of their fee
9 assessments by February 1. Payment shall be postmarked no later
10 than March 15. Failure by the department to send a fee assessment
11 notification by the deadline, or failure of a person to receive a
12 fee assessment notification, does not relieve that person of his or
13 her obligation to pay the fee. If the department does not meet the
14 February deadline for sending the fee assessment, the fee
15 assessment is due not later than 45 days after ~~receiving~~ **THE**
16 **PERMITTEE RECEIVES** a fee notification.

17 (6) ~~(5)~~ If a storm water permit is issued for a drainage
18 district, the drainage district is responsible for the applicable
19 fee under this section.

20 (7) ~~(6)~~ The department shall assess interest on all fee
21 payments submitted under this section after the due date. The
22 permittee shall pay an additional amount equal to 0.75% of the
23 payment due for each month or portion of a month the payment
24 remains past due.

25 (8) ~~(7)~~ The department shall forward all fees and interest
26 payments collected under this section to the state treasurer for
27 deposit into the fund.

1 (9) ~~(8)~~—The department shall make payment of the required fee
2 assessed under this section a condition of issuance or reissuance
3 of a permit not related solely to a site of construction activity.

4 (10) ~~(9)~~—In addition to any other penalty provided in this
5 part, if a person fails to pay the fee required under this section
6 by its due date, the person is in violation of this part and the
7 department may undertake enforcement actions as authorized under
8 this part.

9 (11) ~~(10)~~—The attorney general may bring an action to collect
10 overdue fees and interest payments imposed under this section.

11 (12) ~~(11)~~—If the permit is for a municipal separate storm
12 sewer system and the population served by that system is different
13 than the latest decennial census, the permittee may appeal the
14 annual fee determination and submit written verification of actual
15 population served by the municipal separate storm sewer system.

16 (13) ~~(12)~~—A person who wishes to appeal either a fee or a
17 penalty assessed under this section is limited to an administrative
18 appeal, in accordance with section 631 of the revised judicature
19 act of 1961, 1961 PA 236, MCL 600.631. The appeal shall be filed
20 within 30 days of the department's fee notification under
21 subsection ~~(4)~~—(5) .

22 (14) ~~(13)~~—As used in this section and section 3119:

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

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

27 (c) "Construction activity" means a human-made earth change or

1 disturbance in the existing cover or topography of land that is 5
2 acres or more in size, for which a national permit is required
3 pursuant to 40 CFR 122.26(a), and which is described as a
4 construction activity in 40 CFR 122.26(b)(14)(x). Construction
5 activity includes clearing, grading, and excavating activities.
6 Construction activity does not include the practice of clearing,
7 plowing, tilling soil, and harvesting for the purpose of crop
8 production.

9 (d) "Fee" means a storm water discharge fee authorized under
10 this section.

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

12 (f) "General permit" means a permit issued authorizing a
13 category of similar discharges.

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

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

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

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

6 (j) "Permit" or "storm water discharge permit" means a permit
7 authorizing the discharge of wastewater or any other substance to
8 surface waters of the state under the national pollutant discharge
9 elimination system, pursuant to the clean water act or this part
10 and the rules and regulations promulgated under that act or this
11 part.

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

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

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

23 (ii) The system is not part of a publicly owned treatment
24 works.

25 (m) "Storm water" means storm water runoff, snowmelt runoff,
26 and surface runoff and drainage.

27 (n) "Storm water discharge associated with industrial

1 activity" means a point source discharge of storm water from a
2 facility ~~which~~ **THAT** is defined as an industrial activity under 40
3 CFR 122.26(b)(14)(i-ix and xi).

4 Sec. 3120. (1) ~~Until October 1, 2009~~ **SUBJECT TO SUBSECTION**
5 **(6)**, an application for a new permit, a reissuance of a permit, or
6 a modification of an existing permit under this part authorizing a
7 discharge into surface water, other than a storm water discharge,
8 shall be accompanied by an application fee as follows:

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

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

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

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

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

21 (4) If the department fails to make a decision on an
22 application within the applicable time period under subsection (2)
23 or (3), the department shall return to the applicant the
24 application fee submitted under subsection (1) and the applicant
25 shall not be subject to an application fee and shall receive a 15%
26 annual discount on an annual permit fee required for a permit
27 issued based upon that application.

1 (5) ~~Until October 1, 2009~~ **SUBJECT TO SUBSECTION (6)**, a person
2 who receives a permit under this part authorizing a discharge into
3 surface water, other than a stormwater discharge, is subject to an
4 annual permit fee as follows:

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

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

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

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

11 (iii) For an individual permit for a low-flow facility,
12 \$1,650.00.

13 (iv) For an individual permit for a high-flow facility,
14 \$3,650.00.

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

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

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

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

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

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

27 (i) For an individual permit for a facility discharging 10 MGD

1 or more, \$3,775.00.

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

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

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

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

8 (e) For a municipal facility that is a CSO facility,
9 \$6,000.00.

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

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

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

17 (ii) The facility is an EPA major facility that is not a
18 farmers' cooperative corporation, in which case the fee ~~would be~~ **IS**
19 \$8,700.00.

20 (h) For a facility that holds a permit issued under this part
21 but has no discharge and the facility is connected to and is
22 authorized to discharge only to a municipal wastewater treatment
23 system, an annual permit maintenance fee of \$100.00. However, if a
24 facility does have a discharge or at some point is no longer
25 connected to a municipal wastewater treatment system, the annual
26 permit fee shall be the appropriate fee as otherwise provided in
27 this subsection.

1 (6) BEGINNING IN THE STATE FISCAL YEAR ENDING ON SEPTEMBER 30,
2 2010, THE FEES PROVIDED IN SUBSECTIONS (1) AND (5) SHALL BE
3 ANNUALLY ADJUSTED FOR INFLATION EACH STATE FISCAL YEAR USING THE
4 DETROIT CONSUMER PRICE INDEX. AN ADJUSTMENT UNDER THIS SUBSECTION
5 SHALL BE ROUNDED TO THE NEAREST DOLLAR.

6 (7) ~~(6)~~—If the person required to pay an application fee under
7 subsection (1) or an annual permit fee under subsection (5) is a
8 municipality, the municipality may pass on the application fee or
9 the annual permit fee, or both, to each user of the municipal
10 facility.

11 (8) ~~(7)~~—The department shall send invoices for annual permit
12 fees under subsection (5) to all permit holders by December 1 of
13 each year. The fee shall be based on the status of the facility as
14 of October 1 of that year. A person subject to an annual permit fee
15 shall pay the fee not later than January 15 of each year. Failure
16 by the department to send an invoice by the deadline, or failure of
17 a person to receive an invoice, does not relieve that person of his
18 or her obligation to pay the annual permit fee. If the department
19 does not meet the December 1 deadline for sending invoices, the
20 annual permit fee is due not later than 45 days after receiving an
21 invoice. The department shall forward annual permit fees received
22 under this section to the state treasurer for deposit into the
23 national pollutant discharge elimination system fund created in
24 section 3121.

25 (9) ~~(8)~~—The department shall assess a penalty on all annual
26 permit fee payments submitted under this section after the due
27 date. The penalty shall be an amount equal to 0.75% of the payment

1 due for each month or portion of a month the payment remains past
2 due.

3 (10) ~~(9)~~—Following payment of an annual permit fee, if a
4 permittee wishes to challenge its annual permit fee under this
5 section, the owner or operator shall submit the challenge in
6 writing to the department. The department shall not process the
7 challenge unless it is received by the department by March 1 of the
8 year the payment is due. A challenge shall identify the facility
9 and state the grounds upon which the challenge is based. Within 30
10 calendar days after receipt of the challenge, the department shall
11 determine the validity of the challenge and provide the permittee
12 with notification of a revised annual permit fee and a refund, if
13 appropriate, or a statement setting forth the reason or reasons why
14 the annual permit fee was not revised. If the owner or operator of
15 a facility desires to further challenge its annual permit fee, the
16 owner or operator of the facility has an opportunity for a
17 contested case hearing as provided for under the administrative
18 procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

19 (11) ~~(10)~~—The attorney general may bring an action for the
20 collection of the annual permit fee imposed under this section.

21 ~~—— (11) Within 30 days after the effective date of the amendatory~~
22 ~~act that added this section, the director of the department shall~~
23 ~~notify each person holding a permit under this part authorizing a~~
24 ~~discharge into surface water, other than a storm water permit, of~~
25 ~~the requirements of this section.~~

26 (12) As used in this section:

27 (a) "Agricultural purpose" means the agricultural production

1 or processing of those plants and animals useful to human beings
2 produced by agriculture and includes, but is not limited to,
3 forages and sod crops, grains and feed crops, field crops, dairy
4 animals and dairy products, poultry and poultry products, cervidae,
5 livestock, including breeding and grazing, equine, fish and other
6 aquacultural products, bees and bee products, berries, herbs,
7 fruits, vegetables, flowers, seeds, grasses, nursery stock, trees
8 and tree products, mushrooms, and other similar products, or any
9 other product, as determined by the commission of agriculture, that
10 incorporates the use of food, feed, fiber, or fur. Agricultural
11 purpose includes an operation or facility that produces wine.

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

16 (c) "Combined sewer system" means a sewer designed and used to
17 convey both storm water runoff and sanitary sewage, and ~~which~~ **THAT**
18 contains lawfully installed regulators and control devices that
19 allow for delivery of sanitary flow to treatment during dry weather
20 periods and divert storm water and sanitary sewage to surface
21 waters during storm flow periods.

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

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

27 (f) "EPA minor facility" means a facility that is not an EPA

1 major facility.

2 (g) "Farmers' cooperative corporation" means a farmers'
3 cooperative corporation organized within the limitations of section
4 98 of 1931 PA 327, MCL 450.98.

5 (h) "General permit" means a permit suitable for use at
6 facilities meeting eligibility criteria as specified in the permit.
7 With a general permit, the discharge from a specific facility is
8 acknowledged through a certificate of coverage issued to the
9 facility.

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

12 (j) "Individual permit" means a permit developed for a
13 particular facility, taking into account that facility's specific
14 characteristics.

15 (k) "Industrial or commercial facility" means a facility that
16 is not a municipal facility.

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

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

20 (n) "Municipal facility" means a facility that is designed to
21 collect or treat sanitary wastewater, and is either publicly or
22 privately owned, and serves a residential area or a group of
23 municipalities.

24 (o) "Wastewater stabilization lagoon" means a type of
25 treatment system constructed of ponds or basins designed to
26 receive, hold, and treat sanitary wastewater for a predetermined
27 amount of time ~~Wastewater is treated through a combination of~~

1 physical, biological, and chemical processes.