

SENATE BILL No. 436

April 2, 2009, Introduced by Senators GILBERT, KUIPERS, SANBORN, RICHARDVILLE, CROUSEY, PATTERSON, PAPPAGEORGE, BROWN, JELINEK, JANSEN, ALLEN and KAHN and referred to the Committee on Economic Development and Regulatory Reform.

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

1 an explanation of the reasons for denial and make specific
2 reference to provisions of this act or rules promulgated under this
3 act providing the basis for denial.

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

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

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

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

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

1 permit, based on the date on which the processing period began,
2 unless the director determines on an application-by-application
3 basis that the public interest is best served by processing in a
4 different order.

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

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

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

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

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

25 (b) The number of applications approved, the number of
26 applications approved by the processing deadline, the number of
27 applications approved after the processing deadline, and the

1 average time for the department to determine administrative
2 completeness and to approve or disapprove applications.

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

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

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

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

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

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

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

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

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

26 (4) IF THE DEPARTMENT DENIES A PERMIT APPLICATION OR REJECTS A
27 PROPOSED REMEDIAL ACTION PLAN CONTRARY TO THE RECOMMENDATION OF A

1 LICENSED PROFESSIONAL ENGINEER UNDER THIS SECTION, WITHIN 15 DAYS
2 AFTER THE DENIAL OR REJECTION, THE DEPARTMENT SHALL PROVIDE TO THE
3 PERMIT APPLICANT OR THE PERSON PROPOSING THE REMEDIAL ACTION PLAN A
4 WRITTEN EXPLANATION OF THE REASONS FOR DENIAL INCLUDING CITATIONS
5 TO SPECIFIC STATUTORY PROVISIONS OR RULES PROMULGATED UNDER THIS
6 ACT PROVIDING THE BASIS FOR DENIAL OR REJECTION. THE EXPLANATION
7 SHALL BE SIGNED BY THE DIRECTOR.

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

11 (6) THE DEPARTMENT SHALL MAINTAIN A LIST OR LISTS OF LICENSED
12 PROFESSIONAL ENGINEERS ELIGIBLE TO CONDUCT REVIEWS OF PERMIT
13 APPLICATIONS OR PROPOSED REMEDIAL ACTION PLANS UNDER THIS SECTION.
14 THE DEPARTMENT SHALL POST EACH LIST ON ITS WEBSITE AND UPDATE EACH
15 LIST AT LEAST EVERY 30 DAYS.

16 (7) THE DIRECTOR SHALL SUBMIT A REPORT BY DECEMBER 1, 2010 AND
17 EACH YEAR THEREAFTER TO THE STANDING COMMITTEES AND APPROPRIATIONS
18 SUBCOMMITTEES OF THE SENATE AND HOUSE OF REPRESENTATIVES WITH
19 PRIMARY RESPONSIBILITY FOR ENVIRONMENTAL ISSUES. THE DEPARTMENT
20 SHALL POST THE CURRENT REPORT ON ITS WEBSITE. THE REPORT SHALL
21 INCLUDE ALL OF THE FOLLOWING INFORMATION FOR EACH TYPE OF PERMIT
22 APPLICATION OR PROPOSED REMEDIAL ACTION PLAN THAT THE DEPARTMENT
23 RECEIVED WITH FINDINGS AND RECOMMENDATIONS OF A LICENSED
24 PROFESSIONAL ENGINEER UNDER THIS SECTION FOR THE PRECEDING FISCAL
25 YEAR:

26 (A) THE NUMBER RECEIVED.

27 (B) THE NUMBER APPROVED, THE NUMBER APPROVED BY THE DEADLINE

1 UNDER SUBSECTION (3), THE NUMBER APPROVED BECAUSE OF FAILURE TO
2 MEET THE DEADLINE UNDER SUBSECTION (3), AND THE AVERAGE TIME FOR
3 THE DEPARTMENT TO APPROVE OR DISAPPROVE THE PERMIT APPLICATIONS OR
4 PROPOSED REMEDIAL ACTION PLANS.

5 (C) THE NUMBER DENIED.

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

7 (A) "DEPARTMENT" MEANS THE DEPARTMENT OF ENVIRONMENTAL
8 QUALITY.

9 (B) "DIRECTOR" MEANS THE DIRECTOR OF THE DEPARTMENT.

10 (C) "PERMIT" MEANS A PERMIT REQUIRED BY ANY OF THE FOLLOWING
11 SECTIONS OR RULES PROMULGATED THEREUNDER:

12 (i) SECTION 3104, FLOODPLAIN ALTERATION PERMIT.

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

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

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

17 (v) SECTION 31509, DAM CONSTRUCTION, REPAIR, OR REMOVAL
18 PERMIT.

19 (vi) SECTION 32503, BOTTOMLAND DREDGING OR SPOILS PERMIT.

20 (vii) SECTION 32723, WATER WITHDRAWAL PERMIT.