

SENATE BILL No. 163

February 6, 2013, Introduced by Senators GREEN, PAPPAGEORGE, KAHN, BRANDENBURG and COLBECK and referred to the Committee on Natural Resources, Environment and Great Lakes.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 1307, 1311, 30103, 30104, 30305, 30306,
30311a, 30311d, 32513, and 32514 (MCL 324.1307, 324.1311,
324.30103, 324.30104, 324.30305, 324.30306, 324.30311a, 324.30311d,
324.32513, and 324.32514), section 1307 as amended by 2012 PA 164,
section 1311 as amended by 2011 PA 246, section 30103 as amended by
2009 PA 139, section 30104 as amended by 2011 PA 218, sections
30305, 30306, and 32513 as amended by 2012 PA 247, sections 30311a
and 30311d as added by 2009 PA 120, and section 32514 as added by
1995 PA 59; and to repeal acts and parts of acts.

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 shall extend the processing

1 period for a permit by not more than 120 days, as specified by the
2 applicant. If requested by the permit applicant, the department may
3 extend the processing period beyond the additional 120 days.

4 However, a processing period shall not be extended under this
5 subsection to a date later than 1 year after the application period
6 ends.

7 **(2) THE APPROVAL OR DENIAL OF AN APPLICATION FOR A PERMIT**
8 **SHALL BE IN WRITING AND SHALL BE BASED UPON EVIDENCE THAT WOULD**
9 **MEET THE STANDARDS IN SECTION 75 OF THE ADMINISTRATIVE PROCEDURES**
10 **ACT OF 1969, 1969 PA 306, MCL 24.275.**

11 **(3) ~~(2)~~**Approval of an application for a permit may be granted
12 with conditions or modifications necessary to achieve compliance
13 with the part or parts of this act under which the permit is
14 issued.

15 **(4) ~~(3)~~**A denial of an application for a permit shall
16 **DOCUMENT, AND ANY REVIEW UPHOLDING THE DECISION SHALL DETERMINE,** to
17 the extent practical, ~~specify all of the reasons for the denial,~~
18 ~~including both~~ **ALL** of the following:

19 **(a) ~~The~~ THAT THE DECISION IS BASED ON SPECIFIC** provisions of
20 this act or rules promulgated under this act. ~~providing the basis~~
21 ~~for the denial.~~

22 **(B) THAT THE DECISION IS BASED UPON SUFFICIENT FACTS OR DATA,**
23 **WHICH ARE RECORDED IN THE FILE.**

24 **(C) ~~(b)~~**To the extent applicable, ~~the scientific information~~
25 ~~providing the basis for the denial.~~ **ALL OF THE FOLLOWING:**

26 **(i) THAT THE DECISION IS THE PRODUCT OF RELIABLE SCIENTIFIC**
27 **PRINCIPLES AND METHODS.**

1 (ii) THAT THE DECISION HAS APPLIED THE PRINCIPLES AND METHODS
2 RELIABLY TO THE FACTS.

3 (5) ~~(4)~~—Except for permits described in subsection ~~(5)~~—(6), 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% 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 (6) ~~(5)~~—If the department fails to satisfy the requirements of
15 subsection (1) with respect to a permit required by section 11509,
16 11512, 30304, or 32603, the application shall be considered to be
17 approved and the department shall be considered to have made any
18 determination required for approval.

19 (7) ~~(6)~~—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 ~~(4)~~—(5) or is
22 considered to have approved a permit under subsection ~~(5)~~—(6) 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 ~~(4)~~—(5), 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 (8) ~~(7)~~—If the department fails to satisfy the requirements of
5 subsection (1) with respect to 10% or more of the applications for
6 a particular type of permit received during a quarter of the state
7 fiscal year, the department shall immediately devote resources from
8 that program to eliminate any backlog and satisfy the requirements
9 of subsection (1) with respect to new applications for that type of
10 permit within the next fiscal quarter.

11 (9) ~~(8)~~—If the department fails to satisfy the requirements of
12 subsection (1), the director shall notify the appropriations
13 committees of the senate and house of representatives of the
14 failure. The notification shall be in writing and shall include
15 both of the following:

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

17 (b) A statement of the amount the department was required to
18 pay the applicant under subsection ~~(4)~~—(5) or a statement that the
19 department was required to consider the application to be approved
20 under subsection ~~(5)~~—(6), as applicable.

21 Sec. 1311. By December 1 each year, the director shall submit
22 a report to the standing committees and appropriations
23 subcommittees of the senate and house of representatives with
24 primary responsibility for issues under the jurisdiction of that
25 department. The department shall post the current report on its
26 website. The report shall include all of the following information
27 for each type of permit for the preceding fiscal year:

1 (a) The number of applications for permits the department
2 received.

3 (b) The number of applications approved, the number of
4 applications approved by the processing deadline, the number of
5 applications approved after the processing deadline, and the
6 average time for the department to determine administrative
7 completeness and to approve or disapprove applications.

8 (c) The number of applications denied, the number of
9 applications denied by the processing deadline, and the number of
10 applications denied after the processing deadline.

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

15 (e) The number of applications that were not administratively
16 complete when received.

17 (f) The amount of money refunded and discounts granted under
18 section 1307.

19 (g) The number of applications processed as provided in
20 section 1309.

21 (h) If a department failed to satisfy the requirements of
22 section 1307(1) with respect to 10% or more of the applications for
23 a particular type of permit received during a quarter of the state
24 fiscal year, the type of permit and percentage of applications for
25 which the requirements were not met, how the department attempted
26 to eliminate any backlog and satisfy the requirements of section
27 1307(1) with respect to new applications for that type of permit

1 within the next fiscal quarter, and whether the department was
2 successful.

3 Sec. 30103. (1) A permit is not required under this part for
4 any of the following:

5 (a) Any fill or structure existing before April 1, 1966, in
6 waters covered by former 1965 PA 291, and any fill or structures
7 existing before January 9, 1973, in waters covered for the first
8 time by former 1972 PA 346.

9 (b) A seasonal structure placed on bottomland to facilitate
10 private noncommercial recreational use of the water if it does not
11 unreasonably interfere with the use of the water by others entitled
12 to use the water or interfere with water flow.

13 (c) Reasonable sanding of beaches to the existing water's edge
14 by a riparian owner.

15 (d) ~~Construction or maintenance of a private~~ **MAINTENANCE OF AN**
16 **agricultural drain, regardless of outlet, --IF ALL OF THE FOLLOWING**
17 **REQUIREMENTS ARE MET:**

18 (i) **THE DRAIN WAS CONSTRUCTED BEFORE JANUARY 1, 1973 OR UNDER A**
19 **PERMIT ISSUED PURSUANT TO THIS PART.**

20 (ii) **THE DRAIN HAS A DRAINAGE AREA THAT IS 160 ACRES OR LESS**
21 **AND THAT IS ENTIRELY IN AGRICULTURAL USE.**

22 (iii) **THE MAINTENANCE INCLUDES ONLY ACTIVITIES THAT MAINTAIN THE**
23 **AS-CONSTRUCTED LOCATION, DEPTH, AND BOTTOM WIDTH OF THE DRAIN AS OF**
24 **JANUARY 1, 2014.**

25 (iv) **THE MAINTENANCE IS PERFORMED BY THE LANDOWNER OR PURSUANT**
26 **TO THE DRAIN CODE OF 1956, 1956 PA 40, MCL 280.1 TO 280.630.**

27 (e) A waste collection or treatment facility that is ordered

1 to be constructed or is approved for construction ~~by the department~~
2 **UNDER STATE OR FEDERAL WATER POLLUTION CONTROL LAW, IF CONSTRUCTED**
3 **IN UPLAND.**

4 (f) Construction and maintenance of minor drainage structures
5 and facilities which are identified by rule promulgated by the
6 department pursuant to section 30110. Before such a rule is
7 promulgated, the rule shall be approved by the majority of a
8 committee consisting of the director of the department, the
9 director of the department of agriculture **AND RURAL DEVELOPMENT**,
10 and the director of the state transportation department or their
11 designated representatives. The rules shall be reviewed at least
12 annually.

13 (g) Maintenance ~~and improvement of all drains~~ **OF A DRAIN THAT**
14 **WAS EITHER** legally established ~~or~~ **AND** constructed ~~prior to~~ **BEFORE**
15 January 1, 1973, pursuant to the drain code of 1956, 1956 PA 40,
16 MCL 280.1 to 280.630, except those legally established drains
17 constituting mainstream portions of certain natural watercourses
18 identified in rules promulgated by the department under section
19 30110, **OR CONSTRUCTED OR MODIFIED UNDER A PERMIT ISSUED PURSUANT TO**
20 **THIS PART. AS USED IN THIS SUBDIVISION, "MAINTENANCE OF A DRAIN"**
21 **MEANS THE PHYSICAL PRESERVATION OF THE CONFIGURATION OF A DRAIN AND**
22 **APPURTENANT STRUCTURES TO RESTORE THE FUNCTION AND APPROXIMATE**
23 **CAPACITY OF THE DRAIN AS CONSTRUCTED, ESTABLISHED, OR MODIFIED AS**
24 **OF JANUARY 1, 2014 AND INCLUDES, BUT IS NOT LIMITED TO, THE**
25 **FOLLOWING ACTIVITIES IF PERFORMED WITH BEST MANAGEMENT PRACTICES TO**
26 **THE LEVELS OF CURRENT ENGINEERING STANDARDS:**

27 (i) EXCAVATION OF ACCUMULATED SEDIMENTS BACK TO ORIGINAL

1 CONTOURS.

2 (ii) RESHAPING OF THE SIDE SLOPES.

3 (iii) BANK STABILIZATION TO PREVENT EROSION WHERE REASONABLY
4 NECESSARY.

5 (iv) ARMORING, LINING, OR PIPING IF A PREVIOUSLY ARMORED,
6 LINED, OR PIPED SECTION IS BEING REPAIRED AND ALL WORK OCCURS
7 WITHIN THE FOOTPRINT OF THE PREVIOUS WORK.

8 (v) REPLACEMENT OF EXISTING CONTROL STRUCTURES, IF THE
9 ORIGINAL FUNCTION OF THE DRAIN IS NOT CHANGED AND THE ORIGINAL
10 APPROXIMATE CAPACITY OF THE DRAIN IS NOT INCREASED.

11 (vi) DRAIN REALIGNMENTS WITHIN AN EXISTING DRAIN OR ROAD RIGHT-
12 OF-WAY FOR TRANSPORTATION SAFETY PURPOSES.

13 (vii) INSTALLATION AND REPLACEMENT OF CULVERTS, FOR PROPERTY
14 ACCESS, IN A MANNER THAT DOES NOT IMPAIR THE DESIGNED FLOW OF THE
15 DRAIN.

16 (viii) CONSTRUCTION OF TEMPORARY IN-STREAM SEDIMENTATION BASINS
17 ON A CONSTRUCTION SITE.

18 (ix) INSTALLATION AND REPAIR OF GRADE STABILIZATION STRUCTURES
19 SUCH AS CROSS VEINS, J-HOOKS, AND RIFFLE ZONES.

20 (x) EMERGENCY RECONSTRUCTION OF RECENTLY DAMAGED PARTS OF THE
21 DRAIN SUCH AS DIKES, DAMS, LEVEES, GROINS, RIPRAP, BREAKWATERS,
22 CAUSEWAYS, BRIDGE ABUTMENTS OR APPROACHES, AND TRANSPORTATION
23 STRUCTURES. EMERGENCY RECONSTRUCTION MUST OCCUR WITHIN A REASONABLE
24 PERIOD OF TIME AFTER DAMAGE OCCURS IN ORDER TO QUALIFY FOR THIS
25 EXEMPTION.

26 (h) Projects constructed under the watershed protection and
27 flood prevention act, chapter 656, 68 Stat. 666, 16 USC 1001 to

1 1008 and 1010.

2 (i) Construction and maintenance of privately owned cooling or
3 storage ponds used in connection with a public utility except at
4 the interface with public waters.

5 (j) Maintenance of a structure constructed under a permit
6 issued pursuant to this part and identified by rule promulgated
7 under section 30110, if the maintenance is in place and in kind
8 with no design or materials modification.

9 (k) A water withdrawal.

10 (l) Annual installation of a seasonal dock or docks, pilings,
11 mooring buoys, or other mooring structures previously authorized by
12 and in accordance with a permit issued under this part.

13 (2) As used in this section, "water withdrawal" means the
14 removal of water from its source for any purpose.

15 Sec. 30104. (1) A person shall not undertake a project subject
16 to this part except as authorized by a permit issued by the
17 department pursuant to part 13. An application for a permit shall
18 include any information that may be required by the department. If
19 a project includes activities at multiple locations, 1 application
20 may be filed for the combined activities.

21 (2) Except as provided in subsections (3) and (4), until
22 October 1, 2015, an application for a permit shall be accompanied
23 by a fee based on an administrative cost in accordance with the
24 following schedule:

25 (a) ~~For activities included in a minor project category, or a~~
26 ~~seasonal drawdown or the associated reflooding, or both, of a dam~~
27 ~~or impoundment for the purpose of weed control, a fee of \$50.00.~~

1 ~~However, for a~~ permit for a seasonal drawdown or associated
 2 reflooding, or both, of a dam or impoundment for the purpose of
 3 weed control that is issued for the first time after October 9,
 4 1995, an initial fee of \$500.00 with subsequent permits for the
 5 same purpose being assessed a \$50.00 fee.

6 **(B) FOR ACTIVITIES INCLUDED IN A MINOR PROJECT CATEGORY**
 7 **ESTABLISHED UNDER SECTION 30105(7), A FEE OF \$100.00.**

8 **(C) ~~(b)~~For authorization under ACTIVITIES INCLUDED IN a**
 9 **general permit CATEGORY ESTABLISHED UNDER SECTION 30105(8), a FEE**
 10 **OF \$50.00. ~~fee.~~**

11 **(D) ~~(e)~~For construction or expansion of a marina, a fee of:**

12 (i) \$50.00 for an expansion of 1-10 slips to an existing
 13 permitted marina.

14 (ii) \$100.00 for a new marina with 1-10 proposed marina slips.

15 (iii) \$250.00 for an expansion of 11-50 slips to an existing
 16 permitted marina, plus \$10.00 for each slip over 50.

17 (iv) \$500.00 for a new marina with 11-50 proposed marina slips,
 18 plus \$10.00 for each slip over 50.

19 (v) \$1,500.00 if an existing permitted marina proposes
 20 maintenance dredging of 10,000 cubic yards or more or the addition
 21 of seawalls, bulkheads, or revetments of 500 feet or more.

22 **(E) ~~(d)~~For major projects other than a project described in**
 23 **subdivision ~~(e)(v)~~ (D) (v), involving any of the following, a fee of**
 24 **\$2,000.00:**

25 (i) Dredging of 10,000 cubic yards or more.

26 (ii) Filling of 10,000 cubic yards or more.

27 (iii) Seawalls, bulkheads, or revetments of 500 feet or more.

(iv) Filling or draining of 1 acre or more of wetland contiguous to a lake or stream.

(v) New dredging or upland boat basin excavation in areas of suspected contamination.

(vi) Shore projections, such as groins and underwater stabilizers, that extend 150 feet or more into a lake or stream.

(vii) New commercial docks or wharves of 300 feet or more in length.

(viii) Stream enclosures 100 feet or more in length.

(ix) Stream relocations 500 feet or more in length.

(x) New golf courses.

(xi) Subdivisions.

(xii) Condominiums.

(F) ~~(e)~~—For the removal of submerged logs from bottomland of an inland lake, a \$500.00 fee.

(G) ~~(f)~~—For all other projects not listed in subdivisions (a) through ~~(e)~~—(F), a fee of \$500.00.

(3) A project that requires review and approval under this part and 1 or more of the following acts or parts of acts is subject to only the single highest permit fee required under this part or the following acts or parts of acts:

(A) SECTION 3104.

(B) ~~(a)~~—Part 303.

(C) ~~(b)~~—Part 323.

(D) ~~(c)~~—Part 325.

~~——(d) Section 3104.~~

(e) Section 117 of the land division act, 1967 PA 288, MCL

1 560.117.

2 (4) If work has been done in violation of a permit requirement
3 under this part and restoration is not ordered by the department,
4 the department may accept an application for a permit if the
5 application is accompanied by a fee equal to 2 times the permit fee
6 required under this section.

7 Sec. 30305. (1) Activities that require a permit under part
8 325 or part 301 or a discharge that is authorized by a discharge
9 permit under section 3112 or 3113 do not require a permit under
10 this part.

11 (2) The following uses are allowed in a wetland without a
12 permit subject to other laws of this state and the owner's
13 regulation:

14 (a) Fishing, trapping, or hunting.

15 (b) Swimming or boating.

16 (c) Hiking.

17 (d) Grazing of animals.

18 (e) Farming, horticulture, silviculture, lumbering, and
19 ranching activities, including plowing, irrigation, irrigation
20 ditching, seeding, cultivating, minor drainage, harvesting for the
21 production of food, fiber, and forest products, or upland soil and
22 water conservation practices. **TO BE ALLOWED IN A WETLAND WITHOUT A
23 PERMIT, THESE ACTIVITIES SHALL BE PART OF AN ESTABLISHED ONGOING
24 FARMING, HORTICULTURAL, SILVICULTURAL, OR RANCHING OPERATION.
25 FARMING ACTIVITIES ON AREAS LYING FALLOW AS PART OF A CONVENTIONAL
26 ROTATIONAL CYCLE ARE PART OF AN ESTABLISHED ONGOING OPERATION,
27 UNLESS MODIFICATIONS TO THE HYDROLOGICAL REGIME OR ONGOING**

MECHANIZED LAND CLEARING ARE NECESSARY TO RESUME OPERATION. ACTIVITIES THAT BRING AN AREA INTO FARMING, HORTICULTURAL, SILVICULTURAL, OR RANCHING USE, OR THAT CONVERT AN AREA FROM A FORESTED OR SILVICULTURAL USE TO AGRICULTURAL USE, ARE NOT PART OF AN ESTABLISHED ONGOING OPERATION. MINOR DRAINAGE DOES NOT INCLUDE DRAINAGE ASSOCIATED WITH THE IMMEDIATE OR GRADUAL CONVERSION OF A WETLAND TO A NONWETLAND, OR CONVERSION FROM 1 WETLAND USE TO ANOTHER. MINOR DRAINAGE DOES NOT INCLUDE THE CONSTRUCTION OF A CANAL, DITCH, DIKE, OR OTHER WATERWAY OR STRUCTURE THAT DRAINS OR OTHERWISE SIGNIFICANTLY MODIFIES A STREAM, LAKE, OR WETLAND.

Wetland altered under this subdivision shall not be used for a purpose other than a purpose described in this ~~subsection~~ SECTION without a permit from the department.

(f) Maintenance or operation of serviceable structures in existence on October 1, 1980 or constructed pursuant to this part or former 1979 PA 203.

(g) Construction or maintenance of farm or stock ponds.

~~(h) Maintenance , operation, or improvement which includes straightening, widening, or deepening of the following which is necessary for the production or harvesting of agricultural products:~~

~~—— (i) An existing private agricultural drain.~~ OF THE FOLLOWING DRAINS TO THE AS-CONSTRUCTED LOCATION, DEPTH, AND BOTTOM WIDTH AS OF JANUARY 1, 2014:

(i) AN AGRICULTURAL DRAIN, REGARDLESS OF OUTLET, IF ALL OF THE FOLLOWING REQUIREMENTS ARE MET:

(A) THE DRAIN WAS CONSTRUCTED PRIOR TO JANUARY 1, 1973 OR

1 UNDER A PERMIT ISSUED PURSUANT TO THIS PART.

2 (B) THE DRAIN HAS A DRAINAGE AREA THAT IS 160 ACRES OR LESS
3 AND THAT IS ENTIRELY IN AGRICULTURAL USE.

4 (C) THE MAINTENANCE INCLUDES ONLY ACTIVITIES THAT MAINTAIN THE
5 AS-CONSTRUCTED LOCATION, DEPTH, AND BOTTOM WIDTH OF THE DRAIN AS OF
6 JANUARY 1, 2014.

7 (D) THE MAINTENANCE IS PERFORMED BY THE LANDOWNER OR PURSUANT
8 TO THE DRAIN CODE OF 1956, 1956 PA 40, MCL 280.1 TO 280.630.

9 (ii) That portion of a drain legally established pursuant to
10 the drain code of 1956, 1956 PA 40, MCL 280.1 to 280.630, which has
11 been constructed or improved for drainage purposes.

12 (iii) A drain constructed pursuant to other provisions of this
13 part or former 1979 PA 203.

14 MAINTENANCE OF DRAINS UNDER THIS SUBDIVISION INCLUDES, BUT IS NOT
15 LIMITED TO, THE PLACEMENT OF SPOILS REMOVED FROM A DRAIN IN
16 LOCATIONS WHERE SPOILS HAVE BEEN PREVIOUSLY PLACED ALONG THAT
17 DRAIN. MAINTENANCE OF DRAINS UNDER THIS SUBDIVISION DOES NOT
18 INCLUDE ANY MODIFICATION TO THE CHARACTER, SCOPE, OR SIZE OF THE
19 DRAIN AS OF JANUARY 1, 2014, OR ANY MODIFICATION THAT RESULTS IN
20 ADDITIONAL WETLAND DRAINAGE OR CONVERSION OF WETLAND TO A USE TO
21 WHICH IT WAS NOT PREVIOUSLY SUBJECT.

22 (i) Construction or maintenance of farm roads, forest roads,
23 or temporary roads for moving mining or forestry equipment, if the
24 roads are constructed and maintained in a manner to assure-ENSURE
25 that any adverse effect on the wetland will be otherwise minimized.

26 ~~—— (j) Drainage necessary for the production and harvesting of~~
27 ~~agricultural products if the wetland is owned by a person who is~~

~~engaged in commercial farming and the land is to be used for the production and harvesting of agricultural products. Except as otherwise provided in this part, wetland improved under this subdivision after October 1, 1980 shall not be used for nonfarming purposes without a permit from the department. This subdivision does not apply to a wetland that is contiguous to a lake or stream, or to a tributary of a lake or stream, or to a wetland that the department has determined by clear and convincing evidence to be a wetland that is necessary to be preserved for the public interest, in which case a permit is required.~~

(J) ~~(k)~~ Maintenance ~~or improvement~~ of public streets, highways, or roads ~~, within the right of way and~~ **THAT MEETS ALL OF THE FOLLOWING REQUIREMENTS:**

(i) **DOES NOT INCLUDE ANY MODIFICATION THAT CHANGES THE ORIGINAL LOCATION OR FOOTPRINT.**

(ii) **IS DONE** ~~in such a manner as to assure that~~ **MINIMIZES** any adverse effect on the wetland. ~~will be otherwise minimized.~~
~~Maintenance or improvement does not include adding extra lanes, increasing the right of way, or deviating from the existing location of the street, highway, or road.~~

(K) ~~(l)~~ Maintenance ~~, OR repair, or operation of gas or oil pipelines and construction of gas or oil pipelines having a diameter of 6 inches or less, if the pipelines are constructed, maintained, or repaired~~ **OF UTILITY LINES AND ASSOCIATED SUPPORT STRUCTURES THAT MEETS ALL OF THE FOLLOWING REQUIREMENTS:**

(i) **IS DONE** in a manner ~~to assure that~~ **MINIMIZES** any adverse effect on the wetland. ~~will be otherwise minimized.~~

1 (ii) DOES NOT INCLUDE ANY MODIFICATION TO THE CHARACTER, SCOPE,
2 OR SIZE OF THE ORIGINALLY CONSTRUCTED DESIGN.

3 (iii) DOES NOT CONVERT A WETLAND AREA TO A USE TO WHICH IT WAS
4 NOT PREVIOUSLY SUBJECT.

5 FOR THE PURPOSES OF THIS SUBDIVISION AND SUBDIVISION (I), "UTILITY
6 LINE" MEANS ANY PIPE OR PIPELINE USED FOR THE TRANSPORTATION OF ANY
7 GASEOUS, LIQUID, LIQUESCENT, OR SLURRY SUBSTANCE, FOR ANY PURPOSE,
8 AND ANY CABLE, LINE, OR WIRE FOR THE TRANSMISSION FOR ANY PURPOSE
9 OF ELECTRICAL ENERGY, TELEPHONE OR TELEGRAPH MESSAGES, OR RADIO OR
10 TELEVISION COMMUNICATION.

11 (I) ~~(m) Maintenance, repair, or operation of electric~~
12 ~~transmission and distribution power lines and construction of~~
13 ~~distribution power lines, if the distribution power lines are~~
14 ~~constructed, maintained, or repaired~~ INSTALLATION OF UTILITY LINES
15 HAVING A DIAMETER OF 6 INCHES OR LESS USING DIRECTIONAL DRILLING OR
16 BORING, OR KNIFING-IN, AND THE PLACEMENT OF POLES WITH MINIMAL
17 (LESS THAN 1 CUBIC YARD) STRUCTURE SUPPORT, IF THE UTILITY LINES
18 AND POLES ARE INSTALLED in a manner ~~to assure that~~ MINIMIZES any
19 adverse effect on the wetland. ~~will be otherwise minimized.~~
20 DIRECTIONAL DRILLING OR BORING UNDER THIS SUBDIVISION SHALL MEET
21 ALL OF THE FOLLOWING REQUIREMENTS:

22 (i) THE TOP OF THE UTILITY LINE SHALL BE AT LEAST 4 FEET BELOW
23 THE SOIL SURFACE OF THE WETLAND. HOWEVER, IF THE PRESENCE OF ROCK
24 PREVENTS THE PLACEMENT OF THE UTILITY LINE AT THE DEPTH OTHERWISE
25 REQUIRED BY THIS SUBPARAGRAPH, THE BOTTOM OF THE UTILITY LINE MAY
26 BE PLACED NOT HIGHER THAN THE TOP OF THE ROCK.

27 (ii) THE ENTRY AND EXIT HOLES SHALL BE LOCATED A SUFFICIENT

1 DISTANCE FROM THE WETLAND TO ENSURE THAT DISTURBANCE OF THE WETLAND
2 DOES NOT OCCUR.

3 (iii) THE OPERATION SHALL NOT RESULT IN THE ERUPTION OR RELEASE
4 OF ANY DRILLING FLUIDS UP THROUGH THE GROUND AND INTO THE WETLAND
5 AND THERE IS AN ADEQUATE PLAN TO RESPOND TO ANY RELEASE OF DRILLING
6 MUD OR OTHER FILL MATERIAL.

7 (M) ~~(n)~~ Operation or maintenance, including reconstruction of
8 recently damaged parts, of serviceable dikes and levees in
9 existence on October 1, 1980 or constructed pursuant to this part
10 or former 1979 PA 203.

11 ~~—— (e) Construction of iron and copper mining tailings basins and~~
12 ~~water storage areas.~~

13 (3) An activity in a wetland that was effectively drained for
14 farming before October 1, 1980 and that on and after October 1,
15 1980 has continued to be effectively drained as part of an ongoing
16 farming operation is not subject to regulation under this part.

17 (4) A wetland that is incidentally created as a result of 1 or
18 more of the following activities is not subject to regulation under
19 this part:

20 (a) ~~Excavation for mineral or sand~~ **COMMERCIAL EXCAVATION FOR**
21 **SAND, STONE, GRAVEL, OR MINERAL** mining, if the area was not a
22 wetland before excavation. This exemption ~~does not include a~~
23 ~~wetland on or adjacent to a water body of 1 acre or more in~~
24 ~~size.~~ **FROM REGULATION APPLIES ONLY WHILE THE COMMERCIAL EXCAVATION**
25 **IS ONGOING.**

26 (b) Construction and operation of a water treatment pond, ~~or~~
27 lagoon, **OR OTHER FACILITY** in compliance with the requirements of

1 state or federal water pollution control ~~regulations.~~**LAWS.**

2 (c) A diked area associated with a landfill if the landfill
3 complies with the terms of the landfill construction permit and if
4 the diked area was not a wetland before diking.

5 (D) CONSTRUCTION OF DRAINS IN UPLAND FOR THE SOLE PURPOSE OF
6 REMOVING EXCESS SOIL MOISTURE FROM UPLAND AGRICULTURAL AREAS.

7 (5) AN AREA THAT BECOMES CONTIGUOUS TO A WATER BODY CREATED AS
8 A RESULT OF COMMERCIAL EXCAVATION FOR SAND, GRAVEL, OR MINERAL
9 MINING IS NOT SUBJECT TO REGULATION UNDER THIS PART SOLELY BECAUSE
10 IT IS CONTIGUOUS TO THE CREATED WATER BODY. THIS EXEMPTION FROM
11 REGULATION APPLIES ONLY WHILE THE COMMERCIAL EXCAVATION IS ONGOING.

12 (6) ~~(5)~~—Except as provided in subsection ~~(6)~~, (7), the
13 following activities are not subject to regulation under this part:
14 ~~by the state.~~

15 (a) Leveling of sand, removal of vegetation, grooming of soil,
16 or removal of debris, in an area of unconsolidated material
17 predominantly composed of sand, rock, or pebbles, located between
18 the ordinary high-water mark and the water's edge.

19 (b) Mowing of vegetation between the ordinary high-water mark
20 and the water's edge.

21 (7) ~~(6)~~—Subsection ~~(5)~~ (6) does not apply to lands included in
22 the survey of the delta of the St. Clair River, otherwise referred
23 to as the St. Clair flats, located within Clay township, St. Clair
24 county, as provided for in 1899 PA 175.

25 Sec. 30306. (1) Except as provided in section 30307(6), to
26 obtain a permit for a use or development listed in section 30304, a
27 person shall file an application with the department on a form

1 provided by the department. The application shall include all of
2 the following:

3 (a) The person's name and address.

4 (b) The location of the wetland.

5 (c) A description of the wetland. ~~on which the use or~~
6 ~~development is to be made.~~

7 (d) A statement and appropriate drawings describing the
8 proposed use or development.

9 (e) The wetland owner's name and address.

10 (f) An environmental assessment of the proposed use or
11 development if requested by the department. The assessment shall
12 include the effects upon wetland benefits and the effects upon the
13 water quality, flow, and levels, and the wildlife, fish, and
14 vegetation within a contiguous lake, river, or stream.

15 (2) For the purposes of subsection (1), a proposed use or
16 development of a wetland shall be covered by a single permit
17 application under this part if the scope, extent, and purpose of a
18 use or development are made known at the time of the application
19 for the permit.

20 (3) Except as provided in subsections (4) and (5), an
21 application for a permit submitted under subsection (1) shall be
22 accompanied by the following fee, as applicable:

23 (a) For a project in a category of activities for which a
24 general permit is issued under section 30312, a fee of
25 ~~\$100.00-~~\$50.00.

26 **(B) FOR ACTIVITIES INCLUDED IN A MINOR PROJECT CATEGORY**
27 **ESTABLISHED UNDER SECTION 30312(1), A FEE OF \$100.00.**

1 (C) ~~(b)~~ For a major project, including any of the following, a
2 fee of \$2,000.00:

3 (i) Filling or draining of 1 acre or more of coastal or inland
4 wetland.

5 (ii) 10,000 cubic yards or more of wetland fill.

6 (iii) A new golf course affecting wetland.

7 (iv) A subdivision affecting wetland.

8 (v) A condominium affecting wetland.

9 (D) ~~(e)~~ For all other projects, a fee of \$500.00.

10 (4) A project that requires review and approval under this
11 part and 1 or more of the following is subject to only the single
12 highest permit fee required under this part or the following:

13 (a) Section 3104.

14 (b) Part 301.

15 (c) Part 323.

16 (d) Part 325.

17 (e) Section 117 of the land division act, 1967 PA 288, MCL
18 560.117.

19 (5) If work has been done in violation of a permit requirement
20 under this part and restoration is not ordered by the department,
21 the department may accept an application for a permit if the
22 application is accompanied by a fee equal to twice the permit fee
23 otherwise required under this section.

24 (6) If the department determines that a permit is not required
25 under this part, the department shall promptly refund the fee paid
26 under this section.

27 (7) **THE DEPARTMENT MAY ISSUE A CONDITIONAL PERMIT BEFORE THE**

1 EXPIRATION OF THE 20-DAY PERIOD REFERRED TO IN SECTION 30307 IF
2 EMERGENCY CONDITIONS WARRANT A PROJECT TO PROTECT PROPERTY OR THE
3 PUBLIC HEALTH, SAFETY, OR WELFARE.

4 Sec. 30311a. ~~(1)~~ A guideline, bulletin, interpretive
5 statement, or form with instructions under this part shall not be
6 given the force and effect of law. A guideline, bulletin,
7 interpretive statement, or form with instructions under this part
8 is not legally binding on the public or the regulated community and
9 shall not be cited by the department for compliance and enforcement
10 purposes.

11 ~~—— (2) Within 1 year after the effective date of the 2009~~
12 ~~amendatory act that added this subsection, the department shall~~
13 ~~adopt a new guidance document for the evaluation of feasible and~~
14 ~~prudent alternatives. The guidance document shall be consistent~~
15 ~~with findings and recommendations of the United States~~
16 ~~environmental protection agency's region 5 review of the program~~
17 ~~under this part. The department shall develop the guidance document~~
18 ~~in consultation with interested parties, including the council.~~

19 ~~—— (3) Before the guidance document under subsection (2) takes~~
20 ~~effect, the department shall not deny an application for a permit~~
21 ~~required under section 30304 because of the availability of a~~
22 ~~feasible and prudent alternative based solely on consideration of~~
23 ~~statewide alternatives, higher cost, or reduced profit unless both~~
24 ~~of the following apply:~~

25 ~~—— (a) The proposed denial has been reviewed by a department~~
26 ~~deputy director.~~

27 ~~—— (b) The department has requested information from the Michigan~~

~~economic development corporation and applicable regional and local economic development authorities relative to the project and considered the information received.~~

~~—— (4) Before the guidance document under subsection (2) takes effect, the processing period specified under section 1301 for a permit required under section 30304 is extended if department staff have proposed denying the permit for reasons set forth in subsection (7). Notwithstanding section 1307(1), the extension shall be for not more than 45 days.~~

~~—— (5) The department shall not file a request for rule making under section 39 of the administrative procedures act, 1969 PA 306, MCL 24.239, for rules addressing the evaluation of feasible and prudent alternatives before October 1, 2012.~~

Sec. 30311d. (1) The department may impose as a condition on any permit, other than a general permit, under this part a requirement for compensatory wetland mitigation. The department may approve 1 or more of the following methods of compensatory wetland mitigation:

(a) The acquisition of approved credits from a wetland mitigation bank. The department shall not require a permit applicant to provide compensatory wetland mitigation under subdivision (b), (c), or (d) if the applicant prefers and qualifies to use approved credits from the wetland mitigation bank to provide required compensatory wetland mitigation under this subdivision.

(b) The restoration of previously existing wetland. The restoration of previously existing wetland is preferred over the creation of new wetland where none previously existed.

1 (c) The creation of new wetlands, if the permit applicant
2 demonstrates that ecological conditions necessary for establishment
3 of a self-sustaining wetland ecosystem exist or will be created.

4 (d) The preservation of exceptional wetlands.

5 (2) If compensatory wetland mitigation under subsection
6 (1)(b), (c), or (d) is required, a permit applicant shall submit a
7 mitigation plan to the department for approval. In approving a
8 compensatory mitigation plan, the department shall consider how the
9 location and type of wetland mitigation supports the sustainability
10 or improvement of aquatic resources in the watershed where the
11 activity is permitted. The permit applicant shall provide for
12 permanent protection of the wetland mitigation site. The department
13 may accept a conservation easement to protect wetland mitigation
14 and associated upland.

15 (3) If a permittee carries out compensatory wetland mitigation
16 under subsection (1)(b), (c), or (d) in cooperation with public
17 agencies, private organizations, or other parties, the permittee
18 remains responsible for the compensatory wetland mitigation to the
19 extent otherwise provided by law.

20 (4) The department may require financial assurance to ensure
21 that compensatory wetland mitigation is accomplished as specified.
22 To ensure that wetland benefits are replaced by compensatory
23 wetland mitigation, the department may release financial assurance
24 only after the permit applicant or mitigation bank sponsor has
25 completed monitoring of the mitigation site and demonstrated
26 compliance with performance standards in accordance with a schedule
27 in the permit or mitigation banking agreement.

1 (5) BY 1 YEAR AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT
2 THAT ADDED THIS SUBSECTION, THE DEPARTMENT SHALL SUBMIT TO THE
3 OFFICE OF REGULATORY REFORM FOR INFORMAL REVIEW REVISED
4 ADMINISTRATIVE RULES ON MITIGATION THAT DO ALL OF THE FOLLOWING:

5 (A) REDUCE THE PREFERENCE FOR ON-SITE MITIGATION.

6 (B) ALLOW FLEXIBILITY IN MITIGATION RATIOS FOR USES OF
7 WETLANDS.

8 (C) ALLOW A REDUCTION OF MITIGATION RATIOS WHEN APPROVED
9 CREDITS FROM A WETLAND MITIGATION BANK ARE USED.

10 (D) ALLOW CONSIDERATION OF ADDITIONAL ECOLOGICALLY BENEFICIAL
11 FEATURES.

12 (6) THE DEPARTMENT SHALL SUBMIT REVISED ADMINISTRATIVE RULES
13 THAT ENCOURAGE THE DEVELOPMENT OF WETLAND MITIGATION BANKS TO THE
14 OFFICE OF REGULATORY REFORM FOR INFORMAL REVIEW WITHIN 1 YEAR AFTER
15 THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS
16 SUBSECTION. THE RULES SHALL DO ALL OF THE FOLLOWING:

17 (A) ENLARGE MITIGATION BANK SERVICE AREAS. HOWEVER, A SERVICE
18 AREA SHALL BE LOCATED WITHIN THE SAME WATERSHED OR ECOREGION AS THE
19 PERMITTED PROJECT OR ACTIVITY, ENSURE NO NET LOSS OF THE WETLAND
20 RESOURCES, AND PROTECT THE PREDOMINANT WETLAND FUNCTIONS OF THE
21 SERVICE AREA. THE DEPARTMENT SHALL CONSIDER ENLARGING THE SIZE OF
22 ECOREGIONS FOR MITIGATION BANK SERVICE AREAS.

23 (B) ALLOW EARLIER RELEASE OF CREDITS IF THE BENEFITS OF A
24 MITIGATION BANK HAVE BEEN PROPERLY ESTABLISHED AND THE CREDITS ARE
25 REVOCABLE OR COVERED BY A FINANCIAL ASSURANCE.

26 (C) ALLOW WETLAND PRESERVATION TO BE USED IN AREAS WHERE
27 WETLAND RESTORATION OPPORTUNITIES DO NOT EXIST, IF AN UNACCEPTABLE

1 DISRUPTION OF THE AQUATIC RESOURCES WILL NOT RESULT.

2 (7) THE DEPARTMENT SHALL ESTABLISH A WETLAND MITIGATION BANK
3 FUNDING PROGRAM UNDER PART 52 THAT PROVIDES GRANTS AND LOANS TO
4 ELIGIBLE MUNICIPALITIES FOR THE PURPOSES OF ESTABLISHING MITIGATION
5 BANKS.

6 Sec. 32513. (1) To obtain a permit for any work or connection
7 specified in section 32512, a person shall file an application with
8 the department on a form provided by the department. The
9 application shall include all of the following:

10 (a) The name and address of the applicant.

11 (b) The legal description of the lands included in the
12 project.

13 (c) A summary statement of the purpose of the project.

14 (d) A map or diagram showing the proposal on an adequate scale
15 with contours and cross-section profiles of any waterway to be
16 constructed.

17 (e) Other information required by the department.

18 (2) Except as provided in subsections (3) and (4), until
19 October 1, 2015, an application for a permit under this section
20 shall be accompanied by the following fee, as applicable:

21 (a) For a project in a category of activities for which a
22 general permit is issued under section 32512a, a fee of
23 ~~\$100.00~~-\$50.00.

24 (b) For activities included in a minor project category
25 **ESTABLISHED UNDER SECTION 32512A(1)**, a fee of ~~\$50.00~~-\$100.00.

26 (c) For construction or expansion of a marina, a fee of:

27 (i) \$50.00 for an expansion of 1-10 slips to an existing

1 permitted marina.

2 (ii) \$100.00 for a new marina with 1-10 proposed marina slips.

3 (iii) \$250.00 for an expansion of 11-50 slips to an existing
4 permitted marina, plus \$10.00 for each slip over 50.

5 (iv) \$500.00 for a new marina with 11-50 proposed marina slips,
6 plus \$10.00 for each slip over 50.

7 (v) \$1,500.00 if an existing permitted marina proposes
8 maintenance dredging of 10,000 cubic yards or more or the addition
9 of seawalls, bulkheads, or revetments of 500 feet or more.

10 (d) For major projects other than a project described in
11 subdivision (c)(v), involving any of the following, a fee of
12 \$2,000.00:

13 (i) Dredging of 10,000 cubic yards or more.

14 (ii) Filling of 10,000 cubic yards or more.

15 (iii) Seawalls, bulkheads, or revetment of 500 feet or more.

16 (iv) Filling or draining of 1 acre or more of coastal wetland.

17 (v) New dredging or upland boat basin excavation in areas of
18 suspected contamination.

19 (vi) New breakwater or channel jetty.

20 (vii) Shore protection, such as groins and underwater
21 stabilizers, that extend 150 feet or more on Great Lakes
22 bottomlands.

23 (viii) New commercial dock or wharf of 300 feet or more in
24 length.

25 (e) For all other projects not listed in subdivisions (a) to
26 (d), \$500.00.

27 (3) A project that requires review and approval under this

part and 1 or more of the following is subject to only the single highest permit fee required under this part or the following:

(A) SECTION 3104.

(B) ~~(a)~~ Part 301.

(C) ~~(b)~~ Part 303.

(D) ~~(c)~~ Part 323.

~~----- (d) Section 3104.~~

(e) Section 117 of the land division act, 1967 PA 288, MCL 560.117.

(4) If work has been done in violation of a permit requirement under this part and restoration is not ordered by the department, the department may accept an application for a permit if the application is accompanied by a fee equal to 2 times the permit fee otherwise required under this section.

(5) The department shall forward all fees collected under this section to the state treasurer for deposit into the land and water management permit fee fund created in section 30113.

Sec. 32514. Upon receipt of the application, the department shall mail copies to the department of public health, the clerks of the county, city, village, and township, and the drain commissioner of the county or, if none, the road commissioner of the county, in which the project or body of water affected is located, and to the adjacent riparian owners, accompanied by a statement that unless a written objection is filed with the department within 20 days after the mailing of the copies, the department may take action to grant the application. The department may set the application for public hearing. At least 10 days' notice of the hearing shall be given by

1 publication in a newspaper circulated in the county and by mailing
2 copies of the notice to the persons named in this section. **THE**
3 **DEPARTMENT MAY ISSUE A CONDITIONAL PERMIT BEFORE THE EXPIRATION OF**
4 **THE 20-DAY PERIOD IF EMERGENCY CONDITIONS WARRANT A PROJECT TO**
5 **PROTECT PROPERTY OR THE PUBLIC HEALTH, SAFETY, OR WELFARE.**

6 Enacting section 1. Sections 30325 and 30329 of the natural
7 resources and environmental protection act, 1994 PA 451, MCL
8 324.30325 and 324.30329, are repealed.