

Act No. 98
Public Acts of 2013
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**STATE OF MICHIGAN
97TH LEGISLATURE
REGULAR SESSION OF 2013**

Introduced by Senators Green, Pappageorge, Kahn, Brandenburg and Colbeck

ENROLLED SENATE BILL No. 163

AN ACT to amend 1994 PA 451, entitled "An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to protect the people's right to hunt and fish; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, assessments, and donations; to provide certain appropriations; to prescribe penalties and provide remedies; and to repeal acts and parts of acts," by amending sections 1307, 1311, 30103, 30104, 30105, 30305, 30306, 30306b, 30311, 30311a, 30311d, 30312, 30312d, 30321, and 32513 (MCL 324.1307, 324.1311, 324.30103, 324.30104, 324.30105, 324.30305, 324.30306, 324.30306b, 324.30311, 324.30311a, 324.30311d, 324.30312, 324.30312d, 324.30321, and 324.32513), 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 2013 PA 13, sections 30105 and 30311 as amended and sections 30311a, 30311d, and 30312d as added by 2009 PA 120, sections 30305, 30306, and 30312 as amended by 2012 PA 247, section 30306b as amended by 2010 PA 180, section 30321 as amended by 1996 PA 530, and section 32513 as amended by 2013 PA 11, and by adding sections 30101a and 30328; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

Sec. 1307. (1) By the processing deadline, the department shall approve or deny an application for a permit. If requested by the permit applicant, the department shall extend the processing period for a permit by not more than 120 days, as specified by the applicant. If requested by the permit applicant, the department may extend the processing period beyond the additional 120 days. However, a processing period shall not be extended under this subsection to a date later than 1 year after the application period ends.

(2) The approval or denial of an application for a permit shall be in writing and shall be based upon evidence that would meet the standards in section 75 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.275.

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

(4) A denial of an application for a permit shall document, and any review upholding the decision shall determine, to the extent practical, all of the following:

- (a) That the decision is based on specific provisions of this act or rules promulgated under this act.
- (b) That the decision is based upon sufficient facts or data, which are recorded in the file.
- (c) To the extent applicable, all of the following:
 - (i) That the decision is the product of reliable scientific principles and methods.
 - (ii) That the decision has applied the principles and methods reliably to the facts.

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

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

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

(6) If the department fails to satisfy the requirements of subsection (1) with respect to a permit required by section 11509, 11512, 30304, or 32603, the application shall be considered to be approved and the department shall be considered to have made any determination required for approval.

(7) The failure of the department to satisfy the requirements of subsection (1) or the fact that the department is required to make a payment under subsection (5) or is considered to have approved a permit under subsection (6) shall not be used by the department as the basis for discriminating against the applicant. If the department is required to make a payment under subsection (5), the application shall be processed in sequence with other applications for the same type of permit, based on the date on which the processing period began, unless the director determines on an application-by-application basis that the public interest is best served by processing in a different order.

(8) If the department fails to satisfy the requirements of subsection (1) with respect to 10% or more of the applications for a particular type of permit received during a quarter of the state fiscal year, the department shall immediately devote resources from that program to eliminate any backlog and satisfy the requirements of subsection (1) with respect to new applications for that type of permit within the next fiscal quarter.

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

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

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

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

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

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

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

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

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

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

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

(h) If a department failed to satisfy the requirements of section 1307(1) with respect to 10% or more of the applications for a particular type of permit received during a quarter of the state fiscal year, the type of permit and percentage of applications for which the requirements were not met, how the department attempted to eliminate any backlog and satisfy the requirements of section 1307(1) with respect to new applications for that type of permit within the next fiscal quarter, and whether the department was successful.

Sec. 30101a. For the purposes of this part, the powers, duties, functions, and responsibilities exercised by the department because of federal approval of Michigan's permit program under section 404(g) and (h) of the federal water pollution control act, 33 USC 1344, apply only to "navigable waters" and "waters of the United States" as defined under section 502(7) of the federal water pollution control act, 33 USC 1362, and further refined by federally promulgated rules and court decisions that have the full effect and force of federal law. Determining whether additional regulation is necessary to protect Michigan waters beyond the scope of federal law is the responsibility of the Michigan legislature based on its determination of what is in the best interest of the citizens of this state.

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

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

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

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

(d) Maintenance of an agricultural drain, regardless of outlet, if all of the following requirements are met:

(i) The maintenance includes only activities that maintain the location, depth, and bottom width of the drain as constructed or modified at any time before July 1, 2014.

(ii) The maintenance is performed by the landowner or pursuant to the drain code of 1956, 1956 PA 40, MCL 280.1 to 280.630.

(e) A waste collection or treatment facility that is ordered to be constructed or is approved for construction under state or federal water pollution control law, if constructed in upland.

(f) Construction and maintenance of minor drainage structures and facilities which are identified by rule promulgated by the department pursuant to section 30110. Before such a rule is promulgated, the rule shall be approved by the majority of a committee consisting of the director of the department, the director of the department of agriculture and rural development, and the director of the state transportation department or their designated representatives. The rules shall be reviewed at least annually.

(g) Maintenance of a drain that either was legally established and constructed before January 1, 1973, pursuant to the drain code of 1956, 1956 PA 40, MCL 280.1 to 280.630, except those legally established drains constituting mainstream portions of certain natural watercourses identified in rules promulgated by the department under section 30110, or was constructed or modified under a permit issued pursuant to this part. As used in this subdivision, "maintenance of a drain" means the physical preservation of the location, depth, and bottom width of a drain and appurtenant structures to restore the function and approximate capacity of the drain as constructed or modified at any time before July 1, 2014, and includes, but is not limited to, the following activities if performed with best management practices:

(i) Excavation of accumulated sediments back to original contours.

(ii) Reshaping of the side slopes.

(iii) Bank stabilization where reasonably necessary to prevent erosion. Materials used for stabilization must be compatible with existing bank or bed materials.

(iv) Armoring, lining, or piping if a previously armored, lined, or piped section is being repaired and all work occurs within the footprint of the previous work.

(v) Replacement of existing control structures, if the original function of the drain is not changed and the original approximate capacity of the drain is not increased.

(vi) Repair of stabilization structures.

(vii) Culvert replacement, including culvert extensions of not more than 24 additional feet per culvert.

(viii) Emergency reconstruction of recently damaged parts of the drain. Emergency reconstruction must occur within a reasonable period of time after damage occurs in order to qualify for this exemption.

(h) Projects constructed under the watershed protection and flood prevention act, chapter 656, 68 Stat. 666, 16 USC 1001 to 1008 and 1010.

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

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

(k) A water withdrawal.

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

(m) Controlled access of livestock to streams for watering or crossing if constructed in accordance with applicable practice standards set by the United States department of agriculture, natural resources conservation service.

(n) Temporary drawdowns of impoundments at hydroelectric projects licensed by the federal energy regulatory commission (FERC) and subject to FERC's authority if both of the following apply:

(i) The FERC licensee has consulted this state during the drawdown plan development and this state's concerns have been addressed in the drawdown plan as FERC considers appropriate.

(ii) Adverse environmental impacts, including stream flow, aquatic resources, and timing, have been avoided and minimized to the extent practical.

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

(3) As used in this part, "agricultural drain" means a human-made conveyance of water that meets all of the following requirements:

(a) Does not have continuous flow.

(b) Flows primarily as a result of precipitation-induced surface runoff or groundwater drained through subsurface drainage systems.

(c) Serves agricultural production.

(d) Was constructed before January 1, 1973, or was constructed in compliance with this part or former 1979 PA 203.

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

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

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

(b) For activities included in a minor project category established under section 30105(7), a fee of \$100.00.

(c) For activities included in a general permit category established under section 30105(8), a fee of \$50.00.

(d) For construction or expansion of a marina, a fee as follows:

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

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

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

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

(v) \$1,500.00 if an existing permitted marina proposes maintenance dredging of 10,000 cubic yards or more, unless the dredge material has been determined through testing to be 90% or more sand, or the addition of seawalls, bulkheads, or revetments of 500 feet or more.

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

(i) Dredging of 10,000 cubic yards or more, unless the dredge material has been determined through testing to be 90% or more sand.

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

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

(g) For all other projects not listed in subdivisions (a) through (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 fee required under this part or the following acts or parts of acts:

(a) Section 3104.

(b) Part 303.

(c) Part 323.

(d) Part 325.

(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 required under this section.

(5) If the department denies an application for a permit under this part, the department shall promptly refund the application fee paid under this section.

Sec. 30105. (1) The department shall post on its website all of the following under this part:

(a) A list of pending applications.

(b) Public notices.

(c) Public hearing schedules.

(2) The department may hold a public hearing on pending applications.

(3) Except as otherwise provided in this section, upon receiving an application, the department shall submit copies for review to the director of the department of community health or the local health department designated by the director of the department of community health, to the city, village, or township and the county where the project is to be located, to the local conservation district, to the watershed council established under part 311, if any, to the local port commission, if any, and to the persons required to be included in the application pursuant to section 30104(1). Each copy of the application shall be accompanied by a statement that unless a written request is filed with the department within 20 days after the submission for review, the department may grant the application without a public hearing where the project is located. The department may hold a public hearing upon the written request of the applicant or a riparian owner or a governmental unit or other person that is entitled to receive a copy of the application pursuant to this subsection.

(4) After completion of a project for which an application is approved, the department may cause a final inspection to be made and certify to the applicant that the applicant has complied with the department's permit requirements.

(5) At least 10 days' notice of a hearing to be held under this section shall be given by publication in a newspaper circulated in the county where the project is to be located, to the person requesting the hearing, and to the governmental units and other persons that are entitled to receive a copy of the application pursuant to subsection (3).

(6) In an emergency, the department may issue a conditional permit before the expiration of the 20-day period referred to in subsection (3).

(7) After providing notice and an opportunity for a public hearing, the department shall establish minor project categories of activities and projects that are similar in nature, have minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effects on the environment. The department may act upon an application received pursuant to section 30104 for an activity or project within a minor project category without providing notices pursuant to subsection (3). All other provisions of this part, except provisions applicable only to general permits, are applicable to a minor project.

(8) The department, after notice and an opportunity for a public hearing, shall issue general permits on a statewide basis or within a local unit of government for projects that are similar in nature, that will cause only minimal adverse environmental effects when performed separately, and that will only have minimal cumulative adverse effects on the environment. Before authorizing a specific project to proceed under a general permit, the department may provide notice pursuant to subsection (3) but shall not hold a public hearing and shall not typically require a site inspection. A general permit issued under this subsection shall not be valid for more than 5 years. Among the activities the department may consider for general permit eligibility under this subsection are the following:

(a) The removal of qualifying small dams.

(b) The maintenance or repair of an existing pipeline, if the pipeline is maintained or repaired in a manner to ensure that any adverse effects on the inland lake or stream will be minimized.

(9) The department may issue, deny, or impose conditions on project activities authorized under a minor project category or a general permit if the conditions are designed to remove an impairment to the inland lake or stream, to mitigate the effects of the project, or to otherwise improve water quality. The department may also establish a reasonable time when the proposed project is to be completed or terminated.

(10) If the department determines that activity in a proposed project, although within a minor project category or a general permit, is likely to cause more than minimal adverse environmental effects, the department may require that the application be processed according to subsection (3) and reviewed for compliance with section 30106.

(11) The department shall develop by December 31, 2013 and maintain a general permit for activities in drains legally established pursuant to the drain code of 1956, 1956 PA 40, MCL 280.1 to 280.630. The general permit is subject to all of the following:

(a) The general permit shall cover installation and replacement of culverts, clear span bridges, and end sections; culvert extensions; drain realignments; installation of bank stabilization structures and grade stabilization structures; spoil placement; and other common drain activities that use best management practices.

(b) A drain commissioner or drainage board may submit an application for an authorization under the general permit on a countywide basis. The department of agriculture and rural development may submit an application for an authorization under the general permit on behalf of an intercounty drainage board on a drainage-district-wide basis.

(c) The department shall grant or deny an authorization under the general permit by March 1 if the drain commissioner or drainage board applies for the authorization by the preceding January 20. An authorization under the general permit is valid until March 30 of the year after the year in which the authorization is granted.

(d) By December 31 of each year, the drain commissioner or drainage board shall submit a report to the department that includes the names of the drains on which activities were performed under the general permit during that calendar year, the locations and nature of the activities, and plans and other documentation demonstrating that those activities met the general permit requirements.

(e) A drain commissioner or drainage board is not eligible to be granted a new authorization under the general permit if significant violations of the general permit under a previous authorization granted to that drain commissioner or drainage board have not been corrected.

(12) As used in this section, "qualifying small dam" means a dam that meets all of the following conditions:

(a) The height of the dam is less than 2 feet.

(b) The impoundment from the dam covers less than 2 acres.

(c) The dam does not serve as the first dam upstream from the Great Lakes or their connecting waterways.

(d) The dam is not serving as a sea lamprey barrier.

(e) There are no threatened or endangered species that have been identified in the area that will be affected by the project.

(f) There are no known areas of contaminated sediments in the area that will be affected by the project.

(g) The department has received written permission for the removal of the dam from all riparian property owners adjacent to the dam's impoundment.

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

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

(a) Fishing, trapping, or hunting.

(b) Swimming or boating.

(c) Hiking.

(d) Grazing of animals, including fencing and post placement if the fence is designed to control livestock, does not exceed 11 feet in height, and utilizes an amount of material that does not exceed that of a woven wire fence utilizing 6-inch vertical spacing and posts.

(e) Farming, horticulture, silviculture, lumbering, and ranching activities, including plowing, irrigation, irrigation ditching, seeding, cultivating, minor drainage, harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices. All of the following apply for the purposes of this subdivision:

(i) Beginning October 1, 2013, to be allowed in a wetland without a permit, these activities shall be part of an established ongoing farming, ranching, horticultural, or silvicultural operation. Farming and silvicultural activities on areas lying fallow as part of a conventional rotational cycle are part of an established ongoing operation, unless modifications to the hydrological regime or mechanized land clearing are necessary to resume operation. Activities that bring into farming, ranching, horticultural, or silvicultural use an area not in any of these uses, or that convert an area from a forested or silvicultural use to a farming, ranching, or horticultural use, are not part of an established ongoing operation.

(ii) 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.

(iii) Wetland altered under this subdivision shall not be used for a purpose other than a purpose described in this 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 of an agricultural drain, regardless of outlet, if all of the following requirements are met:

(i) The maintenance includes only activities that maintain the location, depth, and bottom width of the drain as constructed or modified at any time before July 1, 2014.

(ii) The maintenance is performed by the landowner or pursuant to the drain code of 1956, 1956 PA 40, MCL 280.1 to 280.630.

(iii) The maintenance does not include any modification that results in additional wetland drainage or conversion of a wetland to a use to which it was not previously subject.

(i) Maintenance of a drain that was legally established and constructed pursuant to the drain code of 1956, 1956 PA 40, MCL 280.1 to 280.630, if the drain was constructed before January 1, 1973 or under a permit issued pursuant to this part. As used in this subdivision, "maintenance of a drain" means the physical preservation of the location, depth, and bottom width of a drain and appurtenant structures to restore the function and approximate capacity of the drain as constructed or modified at any time before July 1, 2014, including the placement of spoils removed from the drain in locations along that drain where spoils have been previously placed. Maintenance of a drain under this subdivision does not include any modification that results in additional wetland drainage or conversion of a wetland to a use to which it was not previously subject.

(j) Construction or maintenance of farm roads, forest roads, or temporary roads for moving mining or forestry equipment, if the roads are constructed and maintained in a manner to ensure that any adverse effect on the wetland will be minimized.

(k) Maintenance of public streets, highways, or roads that meets all of the following requirements:

(i) Does not include any modification that changes the original location or footprint.

(ii) Is done in a manner that minimizes any adverse effect on the wetland.

(l) Maintenance or repair of utility lines and associated support structures that meets all of the following requirements:

(i) Is done in a manner that minimizes any adverse effect on the wetland.

(ii) Does not include any modification to the character, scope, or size of the originally constructed design.

(iii) Does not convert a wetland area to a use to which it was not previously subject.

For the purposes of this subdivision and subdivision (m), "utility line" means any pipe or pipeline used for the transportation of any gaseous, liquid, liquescent, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone or telegraph messages, or radio or television communication.

(m) Installation of utility lines having a diameter of 6 inches or less using directional drilling or boring, or knifing-in, and the placement of poles with minimal (less than 1 cubic yard) structure support, if the utility lines and poles are installed in a manner that minimizes any adverse effect on the wetland. Directional drilling or boring under this subdivision shall meet all of the following requirements:

(i) The top of the utility line is at least 4 feet below the soil surface of the wetland. However, if the presence of rock prevents the placement of the utility line at the depth otherwise required by this subparagraph, the bottom of the utility line is not placed higher than the top of the rock.

(ii) The entry and exit holes are located a sufficient distance from the wetland to ensure that disturbance of the wetland does not occur.

(iii) The operation does not result in the eruption or release of any drilling fluids up through the ground and into the wetland and there is an adequate plan to respond to any release of drilling mud or other fill material.

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

(o) Placement of biological residuals from activities, including the cutting of woody vegetation or the in-place grinding of tree stumps, performed under this section within a wetland, if all the biological residuals originate within that wetland.

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

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

(a) Excavation as part of commercial sand, gravel, or mineral mining, if the area was not a wetland before excavation. This exemption from regulation applies until the property on which the wetland is located meets both of the following requirements:

(i) Is no longer used for excavation as part of commercial sand, gravel, or mineral mining.

(ii) Is being used for another purpose unrelated to excavation as part of commercial sand, gravel, or mineral mining.

(b) Construction and operation of a water treatment pond, lagoon, or storm water facility in compliance with the requirements of state or federal water pollution control laws.

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

(d) Construction of drains in upland for the sole purpose of removing excess soil moisture from upland areas that are primarily in agricultural use.

(e) Construction of roadside ditches in upland for the sole purpose of removing excess soil moisture from upland.

(f) An agricultural soil and water conservation practice designed, constructed, and maintained for the purpose of enhancing water quality.

(5) An area that becomes contiguous to a water body created as a result of commercial excavation for sand, gravel, or mineral mining is not subject to regulation under this part solely because it is contiguous to the created water body. This exemption from regulation applies until the property on which the wetland is located meets both of the following requirements:

(a) Is no longer used for excavation as part of commercial sand, gravel, or mineral mining.

(b) Is being used for another purpose unrelated to excavation as part of commercial sand, gravel, or mineral mining.

(6) Except as provided in subsection (7), the following activities are not subject to regulation under this part:

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

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

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

(8) As used in this part, "agricultural drain" means a human-made conveyance of water that meets all of the following requirements:

(a) Does not have continuous flow.

(b) Flows primarily as a result of precipitation-induced surface runoff or groundwater drained through subsurface drainage systems.

(c) Serves agricultural production.

(d) Was constructed before January 1, 1973, or was constructed in compliance with this part or former 1979 PA 203.

Sec. 30306. (1) Except as provided in section 30307(6), to obtain a permit for a use or development listed in section 30304, a person shall file an application with the department on a form provided by the department. The application shall include all of the following:

(a) The person's name and address.

(b) The location of the wetland.

(c) A description of the wetland.

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

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

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

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

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

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

(b) For activities included in a minor project category established under section 30312(1), a fee of \$100.00.

(c) For a major project, including any of the following, a fee of \$2,000.00:

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

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

(iii) A new golf course affecting wetland.

(iv) A subdivision affecting wetland.

(v) A condominium affecting wetland.

(d) For all other projects, a fee of \$500.00.

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

(a) Section 3104.

(b) Part 301.

(c) Part 323.

(d) Part 325.

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

(5) 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 twice the application fee otherwise required under this section.

(6) If the department determines that a permit is not required under this part or denies an application for a permit under this part, the department shall promptly refund the application fee paid under this section.

(7) The department may issue a conditional permit before the expiration of the 20-day period referred to in section 30307 if emergency conditions warrant a project to protect property or the public health, safety, or welfare.

Sec. 30306b. (1) If a preapplication meeting is requested in writing by the landowner or another person who is authorized in writing by the landowner, the department shall meet with the person or his or her representatives to review a proposed project or a proposed permit application in its entirety. The preapplication meeting shall take place at the department's district office for the district that includes the project site or at the project site itself, as specified in the request.

(2) Except as provided in this subsection, the request shall be accompanied by a fee. The fee for a preapplication meeting at the district office is \$150.00. The fee for a preapplication meeting at the project site is \$250.00 for the first acre or portion of an acre of project area, plus \$50.00 for each acre or portion of an acre in excess of the first acre, but not to exceed a fee of \$1,000.00. However, both of the following apply:

(a) If the location of the project is a single family residential lot that is less than 1 acre in size, there is no fee for a preapplication meeting at the district office, and the fee for a preapplication meeting at the project site is \$100.00.

(b) There is no fee for a preapplication meeting for cranberry and blueberry production activities, whether at the district office or project site.

(3) If the person withdraws the request at least 24 hours before the preapplication meeting, the department may agree with the person to reschedule the meeting or shall promptly refund the fee and need not meet as provided in this section. Otherwise, if, after agreeing to the time and place for a preapplication meeting, the person requesting the meeting is not represented at the meeting, the person shall forfeit the fee for the meeting. If, after agreeing to the time and place for a preapplication meeting, the department is not represented at the meeting, the department shall refund the fee and send a representative to a rescheduled meeting to be held within 10 days after the first scheduled meeting date.

(4) Any written agreement provided by the department as a result of the preapplication meeting regarding the need to obtain a permit is binding on the department for 2 years after the date of the agreement.

Sec. 30311. (1) A permit for an activity listed in section 30304 shall not be approved unless the department determines that the issuance of a permit is in the public interest, that the permit is necessary to realize the benefits derived from the activity, and that the activity is otherwise lawful.

(2) In determining whether the activity is in the public interest, the benefit which reasonably may be expected to accrue from the proposal shall be balanced against the reasonably foreseeable detriments of the activity. The decision shall reflect the national and state concern for the protection of natural resources from pollution, impairment, and destruction. The following general criteria shall be considered:

(a) The relative extent of the public and private need for the proposed activity.

(b) The availability of feasible and prudent alternative locations and methods to accomplish the expected benefits from the activity.

(c) The extent and permanence of the beneficial or detrimental effects that the proposed activity may have on the public and private uses to which the area is suited, including the benefits the wetland provides.

(d) The probable effects of each proposal in relation to the cumulative effects created by other existing and anticipated activities in the watershed.

(e) The probable effects on recognized historic, cultural, scenic, ecological, or recreational values and on the public health or fish or wildlife.

(f) The size of the wetland being considered.

(g) The amount of remaining wetland in the general area.

(h) Proximity to any waterway.

(i) Economic value, both public and private, of the proposed land change to the general area.

(3) In considering a permit application, the department shall give serious consideration to findings of necessity for the proposed activity which have been made by other state agencies.

(4) A permit shall not be issued unless it is shown that an unacceptable disruption will not result to the aquatic resources. In determining whether a disruption to the aquatic resources is unacceptable, the criteria set forth in section 30302 and subsection (2) shall be considered. A permit shall not be issued unless the applicant also shows either of the following:

(a) The proposed activity is primarily dependent upon being located in the wetland.

(b) A feasible and prudent alternative does not exist.

(5) If it is otherwise a feasible and prudent alternative, a property not presently owned by the applicant which could reasonably be obtained, utilized, expanded, or managed in order to fulfill the basic purpose of the proposed activity may be considered. If all of the following requirements are met, there is a rebuttable presumption that alternatives located on property not presently owned by the applicant are not feasible and prudent:

(a) The activity is described in section 30304(a) or (b).

(b) The activity will affect not more than 2 acres of wetland.

(c) The activity is undertaken for the construction or expansion of a single-family home and attendant features, the construction or expansion of a barn or other farm building, or the expansion of a small business facility.

(d) The activity is not covered by a general permit.

(6) Consideration of feasible and prudent alternatives regarding the size of a proposed structure shall be based on the footprint of the structure and not the square footage of the structure.

(7) The choice of and extent of the proposed activity within a proposed structure shall not be considered in determining feasible and prudent alternatives.

(8) An alternative that entails higher costs, as described in R 281.922a(11) of the Michigan administrative code, is not feasible and prudent if those higher costs are unreasonable. In determining whether such costs are unreasonable, the department shall consider both of the following:

(a) The relation of the increased cost to the overall scope and cost of the project.

(b) Whether the projected cost is substantially greater than the costs normally associated with the particular type of project.

Sec. 30311a. A guideline, bulletin, interpretive statement, or form with instructions under this part shall not be given the force and effect of law. A guideline, bulletin, interpretive statement, or form with instructions under this part is not legally binding on the public or the regulated community and shall not be cited by the department for compliance and enforcement purposes.

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.

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

(d) The preservation of exceptional wetlands.

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

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

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

(5) If compensatory wetland mitigation is required, in setting the mitigation ratio the department shall consider the method of compensatory mitigation, the likelihood of success, differences between the functions lost at the impacted site and the functions expected to be produced by the compensatory mitigation project, temporary losses of aquatic resource functions, the difficulty of restoring or establishing the desired aquatic resource type and functions, and the distance between the affected aquatic resource and the mitigation site.

(6) For agricultural activities, a permit applicant may provide for protection and restoration of the impacted site under a conservation easement with the department as part of mitigation requirements. A permit applicant may make a payment into the stewardship fund, if established under subsection (7), as part of mitigation requirements, as an alternative to providing financial assurances required under subsection (4).

(7) The department may establish a stewardship fund in the state treasury. The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments. Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund. The department shall be the administrator of the fund for auditing purposes. The department shall expend money from the fund, upon appropriation, only to develop mitigation for impacted sites or as an alternative to financial assurance required under subsection (4).

(8) By 1 year after the effective date of the amendatory act that added this subsection, the department shall submit to the office of regulatory reform for informal review revised administrative rules on mitigation that do all of the following:

- (a) Reduce the preference for on-site mitigation.
- (b) Allow flexibility in mitigation ratios for uses of wetlands.
- (c) Allow a reduction of mitigation ratios when approved credits from a wetland mitigation bank are used.
- (d) Allow consideration of additional ecologically beneficial features.
- (e) Allow any excess mitigation for any project to be credited to another project at a later date.

(9) The department shall submit revised administrative rules that encourage the development of wetland mitigation banks to the office of regulatory reform for informal review within 1 year after the effective date of the amendatory act that added this subsection. The rules shall do all of the following:

(a) Enlarge mitigation bank service areas. However, a service area shall be located within the same watershed or ecoregion as the permitted project or activity, ensure no net loss of the wetland resources, and protect the predominant wetland functions of the service area. The department shall consider enlarging the size of ecoregions for mitigation bank service areas.

(b) Allow earlier release of credits if the benefits of a mitigation bank have been properly established and the credits are revocable or covered by a financial assurance.

(c) Allow wetland preservation to be used in areas where wetland restoration opportunities do not exist, if an unacceptable disruption of the aquatic resources will not result.

(10) The department shall establish a wetland mitigation bank funding program under part 52 that provides grants and loans to eligible municipalities for the purposes of establishing mitigation banks.

Sec. 30312. (1) After providing notice and an opportunity for a public hearing, the department shall establish minor project categories of activities that are similar in nature, have minimal adverse environmental effects when performed

separately, and will have only minimal cumulative adverse effects on the environment. The department may act upon an application received pursuant to section 30306 for an activity within a minor project category without holding a public hearing or providing notice pursuant to section 30307(1) or (3). A minor project category shall not be valid for more than 5 years, but may be reestablished. All other provisions of this part, except provisions applicable only to general permits, are applicable to a minor project.

(2) The department, after notice and opportunity for a public hearing, shall issue general permits on a statewide basis or within a local unit of government for a category of activities if the department determines that the activities are similar in nature, will cause only minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effects on the environment. A general permit shall be based on the requirements of this part and the rules promulgated under this part, and shall set forth the requirements and standards that shall apply to an activity authorized by the general permit. A general permit shall not be valid for more than 5 years, but may be reissued.

(3) Before authorizing a specific project to proceed under a general permit, the department may provide notice pursuant to section 30307(3) but shall not hold a public hearing and shall not typically require a site inspection. The department shall issue an authorization under a general permit if the conditions of the general permit and the requirements of section 30311 are met. However, in determining whether to issue an authorization under a general permit, the department shall not consider off-site alternatives to be feasible and prudent alternatives.

(4) If the department determines that activity in a proposed project, although within a minor project category or a general permit, is likely to cause more than minimal adverse effects on aquatic resources, including high-value aquatic habitats, the department may require that the application be processed under section 30307.

(5) The department shall coordinate general permit and minor project categories under this part and parts 301 and 325 and may develop and maintain new general permit and minor project categories consistent with nationwide permits, as appropriate. The department may alter the scope of the activities covered under general permit and minor project categories corresponding to nationwide permits if any adverse environmental effects will be minimal.

(6) The department shall develop by October 1, 2013, and maintain a general permit for alteration of wetland for blueberry farming that includes minimal drainage and earth moving if all of the following requirements are met:

(a) The wetland will be restored when farming activities in the wetland cease.

(b) The farmed wetland is placed under conservation easement protection until the wetland is restored when farming activities cease.

(c) Activities that convert the wetland to a nonwetland are prohibited.

(d) Roads, ditches, reservoirs, pump houses, and secondary support facilities for shipping, storage, packaging, parking, and similar purposes are prohibited unless authorized under section 30305.

(7) By December 31, 2013, the department shall propose new general permits or minor project categories for conversion of wetland to blueberry farming or other agriculture that includes more than minimal drainage or earth moving.

Sec. 30312d. (1) The department shall develop a program to facilitate ecologically responsible voluntary wetland restoration and enhancement projects in coordination with state, federal, tribal, and nongovernmental groups specializing in wetland restoration and conservation. The program shall include, but not be limited to, enhancing coordination, consistency, and operational procedures and improving and streamlining the permitting process, to facilitate a net gain in wetland quantity, quality, or both.

(2) The department shall develop a blueberry production assistance program to provide wetland delineation and preapplication services and assistance with avoidance and minimization. The department shall coordinate this program with the department of agriculture and rural development. The department shall also provide education and outreach on wetland regulations and agricultural activities and assist interested parties with the development of wetland mitigation banks for the purpose of providing required compensatory mitigation for agricultural impacts.

Sec. 30321. (1) The department shall make or cause to be made a preliminary inventory of all wetland in this state on a county by county basis and file the inventory with the agricultural extension office, register of deeds, and county clerk.

(2) At least 2 hearings shall be held in each state planning and development region created by Executive Directive No. 1973-1. The hearing shall be held by the department after publication and due notice so that interested parties may comment on the inventory. After the hearings, the department shall issue a final inventory, which shall be sent to and kept by the agricultural extension office, register of deeds, and county clerk. Legislators shall receive an inventory of a county or regional classification for their districts including both preliminary and final inventories unless the legislators request not to receive the materials.

(3) A person who owns or leases a parcel of property may request that the department of environmental quality assess whether the parcel of property or a portion of the parcel is wetland. The request shall satisfy all of the following requirements:

(a) Be made on a form provided by the department.

(b) Be signed by the person who owns or leases the property.

(c) Contain a legal description of the parcel and, if only a portion of the parcel is to be assessed, a description of the portion to be assessed.

(d) Include a map showing the location of the parcel.

(e) Grant the department or its agent permission to enter on the parcel for the purpose of conducting the assessment.

(4) The department shall assess the parcel within a reasonable time after the request is made. The department may enter upon the parcel to conduct the assessment. Upon completion of the assessment, the department shall provide the person with a written assessment report. The assessment report shall do all of the following:

(a) Identify in detail the location of any wetland in the area assessed.

(b) If wetland is present in the area assessed, describe the types of activities that require a permit under this part.

(c) If the assessment report determines that the area assessed or part of the area assessed is not wetland, state that the department lacks jurisdiction under this part as to the area that the report determines is not wetland and that this determination is binding on the department for 3 years from the date of the assessment.

(d) Contain the date of the assessment.

(e) Advise that the person may request the department to reassess the parcel or any part of the parcel that the person believes was erroneously determined to be wetland if the request is accompanied by evidence pertaining to wetland vegetation, soils, or hydrology that is different from or in addition to the information relied upon by the department.

(f) Advise that the assessment report does not constitute a determination of wetland that may be regulated under local ordinance or wetland areas that may be regulated under federal law and advise how a determination of wetland areas regulated under federal law may be obtained.

(g) List regulatory programs that may limit land use activities on the parcel, advise that the list is not exhaustive, and advise that the assessment report does not constitute a determination of jurisdiction under those programs. The regulatory programs listed shall be those under the following parts:

(i) Part 31, with respect to floodplains and floodways.

(ii) Part 91.

(iii) Part 301.

(iv) Part 323.

(v) Part 325.

(vi) Part 353.

(5) A wetland is not contiguous to the Great Lakes or Lake St. Clair, an inland lake or pond, or a river or stream if the department determines that there is no direct physical contact and no surface water or interflowing groundwater connection to such a body of water. A person may request that, as part of an assessment, the department make a determination whether a wetland is not contiguous. The department shall make the determination in writing within 30 days after an on-site evaluation.

(6) The department shall not consider an agricultural drain, as defined in section 30305, in determining whether a wetland is contiguous to the Great Lakes or Lake St. Clair, an inland lake or pond, or a river or stream.

(7) A drainage structure such as a culvert, ditch, or channel, in and of itself, is not a wetland. A temporary obstruction of drainage, in and of itself, is not a wetland until the presence of water is of sufficient frequency and duration to be identified as wetland pursuant to section 30301(2).

(8) A person may request the department to reassess any area assessed under subsections (3) and (4) that the person believes the department erroneously determined to be wetland. The requirements of subsections (3) and (4) apply to the request, assessment, and assessment report. However, the request shall be accompanied by evidence pertaining to wetland vegetation, soils, or hydrology that is different from or in addition to the information relied upon by the department. The assessment report shall not contain the information required by subsection (4)(e).

(9) If an assessment report determines that the area assessed or part of the area assessed is not a wetland regulated by the department under this part, then the area determined by the assessment report not to be a wetland is not a wetland regulated by the department under this part for a period of 3 years after the date of the assessment.

(10) The department may charge a fee for an assessment requested under subsection (3) based upon the cost to the department of conducting an assessment.

(11) There shall be no fee for an assessment under the blueberry production assistance program.

(12) The department shall, upon request of the applicant and without charge, provide to the applicant a copy of any delineation forms completed by the department associated with a permit application.

Sec. 30328. For the purposes of this part, the powers, duties, functions, and responsibilities exercised by the department because of federal approval of Michigan's permit program under section 404(g) and (h) of the federal water pollution control act, 33 USC 1344, apply only to "navigable waters" and "waters of the United States" as defined under section 502(7) of the federal water pollution control act, 33 USC 1362, and further refined by federally promulgated rules and court decisions that have the full effect and force of federal law. Determining whether additional regulation is necessary to protect Michigan waters beyond the scope of federal law is the responsibility of the Michigan legislature based on its determination of what is in the best interest of the citizens of this state.

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

(a) The name and address of the applicant.

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

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

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

(e) Other information required by the department.

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

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

(b) For activities included in a minor project category established under section 32512a(1), a fee of \$100.00.

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

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

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

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

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

(v) \$1,500.00 if an existing permitted marina proposes maintenance dredging of 10,000 cubic yards or more, unless the dredge material has been determined through testing to be 90% or more sand, or the addition of seawalls, bulkheads, or revetments of 500 feet or more.

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

(i) Dredging of 10,000 cubic yards or more, unless the dredge material has been determined through testing to be 90% or more sand.

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

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

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

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

(vi) New breakwater or channel jetty.

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

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

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

(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) Part 301.

(c) Part 303.

(d) Part 323.

(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.

Enacting section 1. Section 30325 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.30325, is repealed.

Enacting section 2. Part 303 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.30301 to 324.30327, is repealed effective 160 days after the effective date, as published in the federal register, of an order by the administrator of the United States environmental protection agency under 40 CFR 233.53(c)(8)(vi) withdrawing approval of the state program under 33 USC 1344(g) and (h).

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Ray E. Randall

Clerk of the House of Representatives

Approved

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Governor