

# HOUSE BILL No. 6038

November 9, 2016, Introduced by Rep. McBroom and referred to the Committee on Natural Resources.

A bill to amend 1994 PA 451, entitled  
"Natural resources and environmental protection act,"  
(MCL 324.101 to 324.90106) by adding part 6.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

### PART 6

#### DEPARTMENT OF ENVIRONMENTAL QUALITY

##### SEC. 601. AS USED IN THIS PART:

(A) "COMMISSION" MEANS THE COMMISSION OF ENVIRONMENTAL  
QUALITY.

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

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

SEC. 602. THE DEPARTMENT OF ENVIRONMENTAL QUALITY IS CREATED.

1 THE DEPARTMENT HAS THE POWERS AND SHALL PERFORM THE DUTIES GRANTED  
2 AND IMPOSED BY THIS ACT AND AS OTHERWISE PROVIDED BY LAW.

3 SEC. 603. (1) THE COMMISSION OF ENVIRONMENTAL QUALITY IS  
4 CREATED AS THE HEAD OF THE DEPARTMENT.

5 (2) THE COMMISSION SHALL BE COMPOSED OF 7 VOTING MEMBERS, NOT  
6 MORE THAN 4 OF WHOM SHALL BE MEMBERS OF THE SAME POLITICAL PARTY,  
7 APPOINTED BY THE GOVERNOR BY AND WITH THE ADVICE AND CONSENT OF THE  
8 SENATE. AT LEAST 1 MEMBER MUST BE FROM THE UPPER PENINSULA. THE  
9 GOVERNOR SHALL SELECT MEMBERS OF THE COMMISSION WITH SPECIAL  
10 REFERENCE TO EACH PERSON'S TRAINING AND EXPERIENCE AND THE ABILITY  
11 AND FITNESS OF THAT PERSON TO DEAL WITH THE ACTIVITIES OF THE  
12 COMMISSION. THE COMMISSION SHALL BE COMPOSED OF 1 MEMBER FROM EACH  
13 OF THE FOLLOWING AREAS OF EXPERTISE:

14 (A) BUSINESS AND MANUFACTURING.

15 (B) PUBLIC UTILITIES.

16 (C) WASTE MANAGEMENT.

17 (D) LOCAL OR MUNICIPAL GOVERNMENT.

18 (E) CONSERVATION OR ENVIRONMENTAL PROTECTION.

19 (F) MEDICINE OR PUBLIC HEALTH.

20 (G) AGRICULTURE.

21 (3) MEMBERS OF THE COMMISSION SHALL SERVE FOR TERMS OF 4 YEARS  
22 OR UNTIL A SUCCESSOR IS APPOINTED, WHICHEVER IS LATER, EXCEPT THAT  
23 OF THE MEMBERS FIRST APPOINTED, 2 SHALL SERVE FOR 2 YEARS, 2 SHALL  
24 SERVE FOR 3 YEARS, AND 3 SHALL SERVE FOR 4 YEARS. EACH MEMBER OF  
25 THE COMMISSION SHALL HOLD OFFICE UNTIL APPOINTMENT AND  
26 QUALIFICATION OF THAT MEMBER'S SUCCESSOR.

27 (4) IF A VACANCY OCCURS ON THE COMMISSION, THE GOVERNOR SHALL

1 APPOINT A MEMBER FOR THE UNEXPIRED TERM IN THE SAME MANNER AS THE  
2 ORIGINAL APPOINTMENT.

3 (5) FOLLOWING A HEARING, THE GOVERNOR MAY REMOVE A MEMBER OF  
4 THE COMMISSION FOR INCOMPETENCE, DERELICTION OF DUTY, MALFEASANCE,  
5 MISFEASANCE, OR NONFEASANCE IN OFFICE, OR ANY OTHER GOOD CAUSE.

6 (6) WITHIN 30 DAYS AFTER MEMBERS FIRST APPOINTED HAVE  
7 QUALIFIED, THE COMMISSION SHALL MEET AT ITS OFFICE IN LANSING. THE  
8 COMMISSION SHALL APPOINT A SECRETARY, WHO NEED NOT BE A MEMBER OF  
9 THE COMMISSION. AN APPOINTED SECRETARY WHO IS NOT A MEMBER OF THE  
10 COMMISSION SHALL NOT VOTE ON COMMISSION DECISIONS. THE COMMISSION  
11 SHALL ELECT FROM AMONG ITS MEMBERS ANY OFFICERS AS IT CONSIDERS  
12 ADVISABLE. NOT LATER THAN SEPTEMBER 30 OF EACH YEAR THE COMMISSION  
13 SHALL DESIGNATE A CHAIRPERSON TO SERVE IN THAT ROLE THROUGH  
14 SEPTEMBER 30 OF THE FOLLOWING YEAR. A MEMBER SHALL NOT SERVE AS  
15 CHAIRPERSON FOR MORE THAN 3 CONSECUTIVE YEARS.

16 (7) FIVE MEMBERS OF THE COMMISSION CONSTITUTE A QUORUM FOR THE  
17 TRANSACTION OF BUSINESS. THE COMMISSION SHALL CONDUCT ITS BUSINESS  
18 AT A PUBLIC MEETING HELD IN COMPLIANCE WITH THE OPEN MEETINGS ACT,  
19 1976 PA 267, MCL 15.261 TO 15.275. THE COMMISSION SHALL GIVE PUBLIC  
20 NOTICE OF THE TIME, DATE, AND PLACE OF THE MEETING IN THE MANNER  
21 REQUIRED BY THAT ACT. THE CHAIRPERSON MAY CALL A MEETING AND SHALL  
22 CALL A MEETING ON REQUEST OF NOT FEWER THAN 4 MEMBERS OF THE  
23 COMMISSION. THE COMMISSION MAY MEET AS OFTEN AS NECESSARY AND AT  
24 OTHER PLACES THAN THE COMMISSIONERS' OFFICES AT LANSING. THE  
25 COMMISSION SHALL MEET AT LEAST ONCE EACH MONTH.

26 (8) FOR ANY BUSINESS OF THE COMMISSION, IF SUPPORT FOR THE  
27 BUSINESS ITEM IS NOT UNANIMOUS BY ALL VOTING MEMBERS OF THE

1 COMMISSION, THE COMMISSION SHALL VOTE IN PERSON AT A MEETING OF THE  
2 COMMISSION. A MAJORITY VOTE CONSISTING OF NOT LESS THAN 4 VOTES  
3 FROM COMMISSIONERS IS REQUIRED FOR ANY NONUNANIMOUSLY SUPPORTED  
4 BUSINESS ITEM TO BE CONSIDERED COMPLETED BY THE COMMISSION.

5 (9) THE MEMBERS OF THE COMMISSION SHALL NOT RECEIVE  
6 COMPENSATION, BUT EACH MEMBER AND THE OTHER OFFICERS ARE ENTITLED  
7 TO REASONABLE EXPENSES WHILE TRAVELING IN THE PERFORMANCE OF THEIR  
8 DUTIES. EACH MEMBER OF THE COMMISSION QUALIFIES BY TAKING AND  
9 SUBSCRIBING TO THE CONSTITUTIONAL OATH OF OFFICE AND BY FILING IT  
10 IN THE OFFICE OF THE SECRETARY OF STATE.

11 (10) A MEMBER OF THE COMMISSION SHALL DISCHARGE HIS OR HER  
12 DUTIES IN A NONPARTISAN MANNER, IN GOOD FAITH, IN THE BEST  
13 INTERESTS OF THIS STATE, AND WITH THE DEGREE OF DILIGENCE, CARE,  
14 AND SKILL THAT A FIDUCIARY WOULD EXERCISE UNDER SIMILAR  
15 CIRCUMSTANCES IN A LIKE POSITION. A MEMBER OF THE COMMISSION SHALL  
16 NOT MAKE OR PARTICIPATE IN MAKING A DECISION, OR IN ANY WAY ATTEMPT  
17 TO USE HIS OR HER POSITION AS A MEMBER OF THE COMMISSION TO  
18 INFLUENCE A DECISION, ON A MATTER BEFORE THE DEPARTMENT OR THE  
19 COMMISSION REGARDING A LOAN, GRANT, OR OTHER EXPENDITURE IN WHICH  
20 THE MEMBER IS DIRECTLY OR INDIRECTLY INTERESTED. A MEMBER OF THE  
21 COMMISSION SHALL NOT HAVE AN INTEREST, DIRECTLY OR INDIRECTLY, IN  
22 ANY CONTRACT WITH THE DEPARTMENT OR THE COMMISSION THAT WOULD CAUSE  
23 A SUBSTANTIAL CONFLICT OF INTEREST. MEMBERS OF THE COMMISSION SHALL  
24 COMPLY, AND THE COMMISSION SHALL ADOPT POLICIES AND PROCEDURES FOR  
25 MEMBERS TO COMPLY, WITH THE REQUIREMENTS OF THIS SUBSECTION AND ALL  
26 OF THE FOLLOWING:

27 (A) 1978 PA 472, MCL 4.411 TO 4.431.

1 (B) 1978 PA 566, MCL 15.181 TO 15.185.

2 (C) 1968 PA 318, MCL 15.301 TO 15.310.

3 (D) 1968 PA 317, MCL 15.321 TO 15.330.

4 (E) 1973 PA 196, MCL 15.341 TO 15.348.

5 (11) WITHIN 1 YEAR AFTER THE ESTABLISHMENT OF THE COMMISSION,  
6 THE COMMISSION SHALL SUBMIT PROPOSED PERFORMANCE MEASURES TO THE  
7 GOVERNOR FOR APPROVAL WITH ADVICE AND CONSENT OF THE SENATE. THE  
8 PERFORMANCE MEASURES MUST BE DESIGNED AS A LIMITED LIST OF METRICS  
9 THAT DO ALL OF THE FOLLOWING:

10 (A) GAUGE PROGRESS TOWARD THE COMMISSION'S GOALS AND MISSION.

11 (B) USE STANDARD TERMINOLOGY AND DEFINITIONS.

12 (C) IDENTIFY RELEVANT PERFORMANCE TARGETS.

13 (D) USE ACCURATE AND RELIABLE DATA SOURCES.

14 (E) MEASURE CUSTOMER SATISFACTION.

15 (12) AFTER THE PERFORMANCE MEASURES ARE APPROVED UNDER  
16 SUBSECTION (11), THE COMMISSION SHALL SUBMIT TO THE GOVERNOR AND  
17 THE LEGISLATURE, NOT LATER THAN SEPTEMBER 30 OF EACH YEAR, A REPORT  
18 ON ITS PERFORMANCE DURING THE PREVIOUS YEAR. THE COMMISSION MAY  
19 CHANGE OR UPDATE PERFORMANCE MEASURES AS NEEDED WITH APPROVAL OF  
20 THE COMMISSION AND THE GOVERNOR WITH ADVICE AND CONSENT OF THE  
21 SENATE.

22 (13) AS USED IN THIS SECTION, "EXPERTISE" MEANS QUALIFICATIONS  
23 CONSISTING OF 1 OR MORE OF THE FOLLOWING:

24 (A) REPRESENTING A STATEWIDE ORGANIZATION DEDICATED TO THE  
25 SPECIFIED AREA.

26 (B) POSSESSING A CURRENT STATE OR FEDERALLY RECOGNIZED  
27 CERTIFICATION OR LICENSURE IN A SPECIALTY SERVING THAT SPECIFIED

1 AREA.

2 (C) BEING EMPLOYED FULL-TIME IN, HAVING AN OWNERSHIP INTEREST  
3 IN, BEING A LISTED PARTNER IN, OR OPERATING PRIMARILY IN THE  
4 SPECIFIED AREA.

5 SEC. 604. (1) THE COMMISSION SHALL APPOINT AND EMPLOY A  
6 DIRECTOR WHO REMAINS IN OFFICE AT THE PLEASURE OF THE COMMISSION.  
7 THE DIRECTOR MAY APPOINT 1 OR MORE DEPUTY DIRECTORS AND OTHER  
8 ASSISTANTS AND EMPLOYEES AS NECESSARY TO IMPLEMENT THIS PART AND  
9 ANY OTHER LAW AFFECTING THE POWERS AND DUTIES OF THE DEPARTMENT. A  
10 PERSON TO WHOM THE DIRECTOR HAS LAWFULLY DELEGATED DECISION-MAKING  
11 AUTHORITY IN WRITING MAY PERFORM A DUTY OR EXERCISE A POWER  
12 CONFERRED BY LAW UPON THE DEPARTMENT AT THE TIME AND TO THE EXTENT  
13 THE DUTY OR POWER IS DELEGATED TO THAT PERSON. IF A VACANCY IN THE  
14 OFFICE OF DIRECTOR OCCURS OR THE DIRECTOR IS UNABLE TO PERFORM THE  
15 DIRECTOR'S DUTIES OR IS ABSENT FROM THE STATE, THE POWERS AND  
16 DUTIES OF THE DIRECTOR ARE TRANSFERRED TO A DEPUTY DIRECTOR  
17 DESIGNATED BY THE COMMISSION UNTIL THE VACANCY IS FILLED OR THE  
18 DIRECTOR'S INABILITY OR ABSENCE FROM THE STATE CEASES.

19 (2) THE COMMISSION MAY ESTABLISH GENERAL POLICIES RELATED TO  
20 ENVIRONMENTAL PROTECTION FOR THE GUIDANCE OF THE DIRECTOR.

21 (3) THE DIRECTOR SHALL CONSULT WITH THE COMMISSION ON  
22 ENVIRONMENTAL POLICY MATTERS.

23 SEC. 605. (1) THE COMMISSION SHALL POSSESS THE POWERS AND  
24 PERFORM THE DUTIES GRANTED AND IMPOSED BY THIS ACT AND AS OTHERWISE  
25 PROVIDED BY LAW.

26 (2) THE COMMISSION SHALL DO ALL OF THE FOLLOWING:

27 (A) EXERCISE APPELLATE AUTHORITY UNDER SECTIONS 606 AND 607.

1 (B) PROVIDE ADVICE TO THE DIRECTOR ON MATTERS RELATING TO THE  
2 DEPARTMENT, INCLUDING, BUT NOT LIMITED TO, ENVIRONMENTAL POLICY.

3 (C) PROVIDE A FORUM FOR PUBLIC REVIEW OF ADMINISTRATIVE RULES,  
4 PERMITS, ORDERS, PROPOSALS, AND OTHER ACTIONS BY THE DEPARTMENT.

5 (D) RECOMMEND THAT THE GOVERNOR DECLARE AN EMERGENCY OR  
6 DISASTER PURSUANT TO THE MICHIGAN EMERGENCY MANAGEMENT ACT, 1976 PA  
7 390, MCL 30.401 TO 30.421, IF IT FINDS A GENERALIZED DANGEROUS  
8 CONDITION OF WATER OR AIR POLLUTION.

9 (E) MAKE INQUIRIES, STUDIES, AND INVESTIGATIONS AND HOLD  
10 HEARINGS AND RECEIVE COMMENTS FROM THE PUBLIC. THE COMMISSION OR A  
11 SUBCOMMITTEE OF THE COMMISSION MAY CONSULT WITH OUTSIDE EXPERTS IN  
12 PERFORMING ITS DUTIES, INCLUDING, BUT NOT LIMITED TO, EXPERTS IN  
13 THE PRIVATE SECTOR, ORGANIZED LABOR, GOVERNMENT AGENCIES, AND  
14 INSTITUTIONS OF HIGHER EDUCATION.

15 (F) ESTABLISH FROM AMONG ITS MEMBERS 2 PERMANENT SUBCOMMITTEES  
16 TO UNDERTAKE THE FOLLOWING ACTIVITIES:

17 (i) ANNUALLY REVIEW AND DEVELOP RECOMMENDATIONS FOR SUBMISSION  
18 TO THE DIRECTOR REGARDING RULES THE DEPARTMENT PROPOSES, AMENDS, OR  
19 RESCINDS TO UPDATE SCIENTIFIC STANDARDS, COMPLY WITH FEDERAL  
20 REQUIREMENTS, OR IMPROVE REGULATORY EFFICIENCY.

21 (ii) PROVIDE TECHNICAL ADVICE ON SCIENTIFIC ENVIRONMENTAL  
22 ISSUES AS DIRECTED BY THE COMMISSION.

23 (G) IN ADDITION TO SUBCOMMITTEES ESTABLISHED UNDER SUBSECTION  
24 (F), ESTABLISH SUBCOMMITTEES TO SERVE AT THE PLEASURE OF THE  
25 COMMISSION TO PERFORM RESEARCH AND INVESTIGATE TOPICS ASSIGNED BY  
26 THE COMMISSION. A SUBCOMMITTEE CREATED BY THE COMMISSION UNDER THIS  
27 SUBDIVISION SHALL REPORT ITS FINDING TO THE FULL COMMISSION AT A

1 REGULAR MEETING OF THE COMMISSION.

2 (H) REVIEW ACTIONS BY THE DEPARTMENT TO ENSURE THAT THEY ARE  
3 BASED ON SOUND SCIENCE AND TECHNICAL VALIDITY, AFTER CONSIDERING  
4 THE ECONOMIC IMPACT AND THE RISKS AND BENEFITS TO THE PUBLIC AND  
5 THE NATURAL RESOURCES OF THIS STATE.

6 (I) PERFORMING ADDITIONAL DUTIES AS PROVIDED BY OTHER LAW, OR  
7 AS REQUESTED BY THE DIRECTOR OR THE GOVERNOR.

8 SEC. 606. (1) SUBJECT TO SUBSECTION (2), IF AN INDIVIDUAL HAS  
9 LEGAL STANDING TO CHALLENGE A DECISION OF THE DEPARTMENT UNDER THIS  
10 ACT REGARDING THE ISSUANCE, DENIAL, SUSPENSION, REVOCATION,  
11 ANNULMENT, WITHDRAWAL, RECALL, CANCELLATION, OR AMENDMENT OF A  
12 PERMIT, AN ENFORCEMENT ACTION, RULES, OR ORDER, OR ANOTHER  
13 DEPARTMENT ACTION RELATED TO PROPERTY OWNED BY THAT INDIVIDUAL, THE  
14 COMMISSION, UPON REQUEST OF THAT INDIVIDUAL, MAY REVIEW THE  
15 DECISION AND MAKE THE FINAL AGENCY DECISION. A DECISION OF THE  
16 DEPARTMENT IS REVIEWABLE BY THE COMMISSION ONLY IF THE COMMISSION  
17 ELECTS TO GRANT A REVIEW. IF AN INDIVIDUAL IS GRANTED REVIEW BY THE  
18 COMMISSION UNDER THIS SECTION, THE INDIVIDUAL IS CONSIDERED TO HAVE  
19 EXHAUSTED HIS OR HER ADMINISTRATIVE REMEDIES WITH REGARD TO THAT  
20 MATTER. LEGAL STANDING UNDER THIS SUBSECTION MEANS THAT AN  
21 INDIVIDUAL DEMONSTRATES ALL OF THE FOLLOWING:

22 (A) THE INDIVIDUAL HAS SUFFICIENT CONNECTION TO A DECISION AND  
23 HARM FROM A DECISION SUCH THAT THE INDIVIDUAL HAS SUFFERED OR WILL  
24 SUFFER IMMINENT INJURY.

25 (B) THE INJURY IS REASONABLY CONNECTED TO THE DEPARTMENT'S  
26 DECISION.

27 (C) COMMISSION REVIEW OR LEGAL ACTION WILL LIKELY REDRESS THE



1 INJURY.

2 (2) IF A PERSON HAS LEGAL STANDING TO CHALLENGE A DECISION OF  
3 THE DEPARTMENT UNDER THIS ACT, THAT PERSON MAY SEEK DIRECT REVIEW  
4 BY THE COURTS AS PROVIDED BY LAW. DIRECT REVIEW BY THE COURTS IS  
5 AVAILABLE TO THAT PERSON AS AN ALTERNATIVE TO ANY ADMINISTRATIVE  
6 REMEDY THAT IS PROVIDED IN THIS ACT. A PRELIMINARY, PROCEDURAL, OR  
7 INTERMEDIATE ACTION OR RULING OF THE DEPARTMENT IS NOT IMMEDIATELY  
8 REVIEWABLE, EXCEPT THAT THE COURT MAY GRANT LEAVE FOR REVIEW OF A  
9 PRELIMINARY, PROCEDURAL, OR INTERMEDIATE ACTION OR RULING IF THE  
10 COURT DETERMINES THAT REVIEW OF THE FINAL DECISION WOULD NOT  
11 PROVIDE AN ADEQUATE REMEDY. IF A PERSON IS GRANTED DIRECT REVIEW BY  
12 THE COURTS UNDER THIS SECTION, THE PERSON IS CONSIDERED TO HAVE  
13 EXHAUSTED HIS OR HER ADMINISTRATIVE REMEDIES WITH REGARD TO THAT  
14 MATTER.

15 (3) IF THE COURT DOES NOT REVIEW A DECISION OF THE DEPARTMENT  
16 BROUGHT BEFORE THE COURT AS PROVIDED IN THIS SECTION, THE PERSON  
17 WITH LEGAL STANDING RETAINS ANY ADMINISTRATIVE APPEAL RIGHTS THAT  
18 ARE OTHERWISE PROVIDED BY LAW.

19 (4) IF THE COURT REVIEWS A PRELIMINARY, PROCEDURAL, OR  
20 INTERMEDIATE DECISION OF THE DEPARTMENT BROUGHT BEFORE THE COURT AS  
21 PROVIDED IN THIS SECTION, THE PERSON WITH LEGAL STANDING RETAINS  
22 THE RIGHT TO JUDICIAL REVIEW OF THE FINAL DECISION OF THE  
23 DEPARTMENT AS PROVIDED BY LAW.

24 SEC. 607. WITH RESPECT TO THOSE MATTERS RELATED TO PROPERTY  
25 OWNED BY AN INDIVIDUAL, THE COMMISSION MAY EXERCISE QUASI-JUDICIAL  
26 POWERS IN ACCORDANCE WITH THE PROVISIONS OF THE ADMINISTRATIVE  
27 PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.201 TO 24.328. THIS

1 SECTION AND ANY RULES ADOPTED BY THE COMMISSION GOVERN PROCEEDINGS  
2 HELD UNDER THIS SECTION. THE PROCEEDINGS ARE SUBJECT TO ALL OF THE  
3 FOLLOWING:

4 (A) CHALLENGES TO DEPARTMENT DECISIONS SHALL BE FILED WITH THE  
5 COMMISSION WITHIN 30 DAYS AFTER THE ISSUANCE OF THE DEPARTMENT  
6 DECISION, UNLESS ADDITIONAL TIME IS ALLOWED BY THE CHAIRPERSON OF  
7 THE COMMISSION.

8 (B) ORAL ARGUMENTS BY THE PARTIES MAY BE ALLOWED BY THE  
9 CHAIRPERSON OF THE COMMISSION UPON REQUEST OF THE PARTIES.

10 (C) IN CONTESTED CASES THAT ARISE FROM ADMINISTRATIVE  
11 ENFORCEMENT ACTIONS, THE COMMISSION SHALL RECOGNIZE IN ITS  
12 EVALUATION OF EACH VIOLATION THAT HARM TO THE NATURAL RESOURCES OF  
13 THIS STATE ARISING FROM THE VIOLATION OF STANDARDS OR LIMITATIONS  
14 ESTABLISHED TO PROTECT THOSE RESOURCES MAY BE IMMEDIATELY OBSERVED  
15 THROUGH DAMAGED RESOURCES OR MAY BE INCREMENTAL OR CUMULATIVE WITH  
16 NO DAMAGE THAT CAN BE IMMEDIATELY OBSERVED OR DOCUMENTED.

17 (D) ADMINISTRATIVE ENFORCEMENT ACTIONS UP TO THE MAXIMUM  
18 AUTHORIZED UNDER THIS ACT MAY BE BASED ON ANY 1 OR COMBINATION OF  
19 THE FOLLOWING FACTORS:

20 (i) THE DEGREE AND EXTENT OF HARM TO THE NATURAL RESOURCES OF  
21 THIS STATE, TO THE PUBLIC HEALTH, OR TO PRIVATE PROPERTY RESULTING  
22 FROM THE VIOLATION.

23 (ii) THE DURATION AND GRAVITY OF THE VIOLATION.

24 (iii) THE EFFECT ON GROUND OR SURFACE WATER QUANTITY OR  
25 QUALITY OR ON AIR QUALITY.

26 (iv) THE COST OF RECTIFYING THE DAMAGE.

27 (v) THE AMOUNT OF MONEY SAVED BY NONCOMPLIANCE.

1           (vi) WHETHER THE VIOLATION WAS COMMITTED WILLFULLY OR  
2 INTENTIONALLY.

3           (vii) THE PRIOR RECORD OF THE VIOLATOR IN COMPLYING OR FAILING  
4 TO COMPLY WITH PROGRAMS OVER WHICH THE COMMISSION HAS REGULATORY  
5 AUTHORITY.

6           (viii) THE COST TO THIS STATE OF THE ENFORCEMENT PROCEDURES.

7           (E) IN ANY CONTESTED CASE CHALLENGING AN ADMINISTRATIVE  
8 ENFORCEMENT ACTION ISSUED BY THE DEPARTMENT, THE CHAIRPERSON SHALL  
9 APPOINT A COMMITTEE ON ADMINISTRATIVE ENFORCEMENT ACTIONS FROM THE  
10 MEMBERS OF THE COMMISSION. A MEMBER OF THE COMMITTEE ON  
11 ADMINISTRATIVE ENFORCEMENT ACTION SHALL NOT HEAR OR VOTE ON ANY  
12 MATTER IN WHICH HE OR SHE HAS AN ECONOMIC INTEREST. THE COMMITTEE  
13 ON ADMINISTRATIVE ENFORCEMENT ACTIONS SHALL MAKE THE FINAL AGENCY  
14 DECISION ON THE CHALLENGE TO AN ADMINISTRATIVE ENFORCEMENT ACTION.  
15 IN MAKING THE FINAL AGENCY DECISION, THE COMMITTEE SHALL CONSIDER  
16 THE RECOMMENDATION OF THE DIRECTOR AND ALL OF THE FOLLOWING  
17 FACTORS:

18           (i) WHETHER 1 OR MORE OF THE FACTORS LISTED IN SUBDIVISION (D)  
19 WERE WRONGLY APPLIED TO THE DETRIMENT OF THE PETITIONER.

20           (ii) WHETHER THE PETITIONER PROMPTLY ABATED CONTINUING  
21 ENVIRONMENTAL DAMAGE RESULTING FROM THE VIOLATION.

22           (iii) WHETHER THE VIOLATION WAS INADVERTENT OR A RESULT OF AN  
23 ACCIDENT.

24           (iv) WHETHER THE PETITIONER HAD BEEN ASSESSED ADMINISTRATIVE  
25 FINES OR OTHER CIVIL REMEDIES FOR ANY PREVIOUS VIOLATIONS.

26           (v) WHETHER THE ADMINISTRATIVE ENFORCEMENT ACTION WILL  
27 ADVERSELY AFFECT PAYMENT FOR THE REMAINING NECESSARY REMEDIAL

1 ACTIONS.

2 (F) IF AN ADMINISTRATIVE FINE HAS NOT BEEN PAID WITHIN 30 DAYS  
3 AFTER THE FINAL AGENCY DECISION OR COURT ORDER HAS BEEN SERVED ON  
4 THE VIOLATOR, THE DIRECTOR SHALL REQUEST THE ATTORNEY GENERAL TO  
5 INSTITUTE A CIVIL ACTION IN THE CIRCUIT COURT OF ANY COUNTY IN  
6 WHICH THE VIOLATOR RESIDES OR THE VIOLATOR'S PRINCIPAL PLACE OF  
7 BUSINESS TO RECOVER THE AMOUNT OF THE ADMINISTRATIVE FINE.