

# SENATE BILL NO. 439

May 12, 2021, Introduced by Senators CHANG, WOJNO, BAYER, IRWIN, ANANICH, GEISS, POLEHANKI and BULLOCK and referred to the Committee on Environmental Quality.

A bill to amend 1994 PA 451, entitled  
"Natural resources and environmental protection act,"  
by amending sections 1301 and 1305 (MCL 324.1301 and 324.1305),  
section 1301 as amended by 2018 PA 451 and section 1305 as amended  
by 2011 PA 246, by designating sections 1301 to 1319 as subpart 1  
of part 13, and by adding subpart 2 to part 13.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

**1**

**SUBPART 1**

**PERMIT PROCESSING GENERALLY**

Sec. 1301. As used in this part:

(a) "Application period" means the period beginning when an application for a permit is received by the state and ending when the application is considered to be administratively complete under section 1305 and any applicable fee has been paid.

(b) "Department" means the department, agency, or officer authorized by this act to approve or deny an application for a particular permit. As used in sections 1315 to ~~1317~~, **1341**,

"department" means the department of ~~environmental quality~~. **environment, Great Lakes, and energy.**

(c) "Director" means the director of the state department authorized under this act to approve or deny an application for a particular permit or the director's designee. As used in sections 1313 to 1317, "director" means the director of the department of ~~environmental quality~~. **environment, Great Lakes, and energy.**

(d) "Environmental permit review commission" or "commission" means the environmental permit review commission established under section 1313(1).

(e) "Environmental permit panel" or "panel" means a panel of the environmental permit review commission, appointed under section 1315(2).

(f) "Permit", except as provided in subdivision (g) **and section 1331**, means a permit, operating license, or registration required by any of the following sections or by rules promulgated thereunder, or, in the case of section 9112, by an ordinance referred to in that section:

(i) Section 3104, floodplain alteration permit.

(ii) Section 3503, permit for use of water in mining iron ore.

- 1       (iii) Section 4105, sewerage system construction permit.
- 2       (iv) Section 6516, vehicle testing license.
- 3       (v) Section 6521, motor vehicle fleet testing permit.
- 4       (vi) Section 8310, restricted use pesticide dealer license.
- 5       (vii) Section 8310a, agricultural pesticide dealer license.
- 6       (viii) Section 8504, license to manufacture or distribute
- 7 fertilizer.
- 8       (ix) Section 9112, local soil erosion and sedimentation control
- 9 permit.
- 10       (x) Section 11509, solid waste disposal area construction
- 11 permit.
- 12       (xi) Section 11512, solid waste disposal area operating
- 13 license.
- 14       (xii) Section 11542, municipal solid waste incinerator ash
- 15 landfill operating license amendment.
- 16       (xiii) Section 11702, septage waste servicing license or septage
- 17 waste vehicle license.
- 18       (xiv) Section 11709, septage waste site permit.
- 19       (xv) Section 30104, inland lakes and streams project permit.
- 20       (xvi) Section 30304, state permit for dredging, filling, or
- 21 other activity in wetland. Permit includes an authorization for a
- 22 specific project to proceed under a general permit issued under
- 23 section 30312.
- 24       (xvii) Section 31509, dam construction, repair, or removal
- 25 permit.
- 26       (xviii) Section 32312, flood risk, high risk, or environmental
- 27 area permit.
- 28       (xix) Section 32512, permit for dredging and filling

1 bottomland.

2 (xx) Section 32603, permit for submerged log removal from Great  
3 Lakes bottomlands.

4 (xxi) Section 35304, department permit for critical dune area  
5 use.

6 (xxii) Section 36505, endangered species permit.

7 (xxiii) Section 41329, nonnative aquatic species sales  
8 registration.

9 (xxiv) Section 41702, game bird hunting preserve license.

10 (xxv) Section 42101, dog training area permit.

11 (xxvi) Section 42501, fur dealer's license.

12 (xxvii) Section 42702, game dealer's license.

13 (xxviii) Section 44513, charter boat operating permit under  
14 reciprocal agreement.

15 (xxix) Section 44516, boat livery operating permit.

16 (xxx) Section 45902, game fish propagation license.

17 (xxxi) Section 45906, game fish import license.

18 (xxxii) Section 48705, permit to take amphibians and reptiles  
19 for scientific or educational use.

20 (xxxiii) Section 61525, oil or gas well drilling permit.

21 (xxxiv) Section 62509, brine, storage, or waste disposal well  
22 drilling or conversion permit or test well drilling permit.

23 (xxxv) Section 63103a, ferrous mineral mining permit.

24 (xxxvi) Section 63514 or 63525, surface coal mining and  
25 reclamation permit or revision of the permit, respectively.

26 (xxxvii) Section 63704, sand dune mining permit.

27 (xxxviii) Section 72108, use permits for a Pure Michigan Trail.

28 (xxxix) Section 76109, sunken aircraft or watercraft abandoned

1 property recovery permit.

2 (xl) ~~(xxx)~~ Section 76504, Mackinac Island ~~motor vehicle and~~  
3 land use permits.

4 (xli) ~~(xxvi)~~ Section 80159, buoy or beacon permit.

5 (g) "Permit", as used in sections 1313 to 1317, means any  
6 permit or operating license that meets both of the following  
7 conditions:

8 (i) The applicant for the permit or operating license is not  
9 this state or a political subdivision of this state.

10 (ii) The permit or operating license is issued by the  
11 department of ~~environmental quality~~ **environment, Great Lakes, and**  
12 **energy** under this act or the rules promulgated under this act.

13 (h) "Processing deadline" means the last day of the processing  
14 period.

15 (i) "Processing period", subject to section 1307(2) and (3),  
16 means the following time period after the close of the application  
17 period, for the following permit, as applicable:

18 (i) Twenty days for a permit under section 61525 or 62509.

19 (ii) Thirty days for a permit under section 9112 or 44516.

20 (iii) Thirty days after the department consults with the  
21 underwater salvage and preserve committee created under section  
22 76103, for a permit under section 76109.

23 (iv) Sixty days, for a permit under section 30104 **or 32512** for  
24 a **project in a** minor project **category** established under section  
25 30105(7) or 32512a(1), ~~or~~ **respectively, for** an authorization for a  
26 specific project to proceed under a general permit issued under  
27 section 30105(8) or 32512a(2), or for a permit under section 32312  
28 or 41329.

29 (v) Sixty days or, if a hearing is held, 90 days for a permit

1 under section 35304.

2 (vi) Sixty days or, if a hearing is held, 120 days for a permit  
3 under section 30104, other than a permit or authorization described  
4 in subparagraph ~~(ii) or (iv)~~, or for a permit under section 31509.

5 (vii) Ninety days for a permit under section 11512, a revision  
6 of a surface coal mining and reclamation permit under section  
7 63525, or a permit under section 72108.

8 (viii) Ninety days or, if a hearing is held, 150 days for a  
9 permit under section 3104 or 30304, or a permit under section 32512  
10 other than a permit described in subparagraph (iv).

11 (ix) Ninety days after the close of the review or comment  
12 period under section ~~32604~~, **32605**, or if a public hearing is held,  
13 90 days after the date of the public hearing for a permit under  
14 section 32603.

15 (x) One hundred twenty days for a permit under section 11509,  
16 11542, 63103a, 63514, or 63704.

17 (xi) One hundred fifty days for a permit under section 36505.  
18 However, if a site inspection or federal approval is required, the  
19 150-day period is tolled pending completion of the inspection or  
20 receipt of the federal approval.

21 (xii) For any other permit, 150 days or, if a hearing is held,  
22 90 days after the hearing, whichever is later.

23 Sec. 1305. (1) After a department receives an application for  
24 a permit, the department shall determine whether the application is  
25 administratively complete. ~~Unless~~ **Subject to section 1335, unless**  
26 the department proceeds as provided under subsection (2), the  
27 application shall be considered to be administratively complete  
28 when the department makes that determination or 30 days after the  
29 state receives the application, whichever is first.

(2) If, before the expiration of the 30-day period under subsection (1), the department notifies the applicant that the application is not administratively complete, specifying the information necessary to make the application administratively complete, or notifies the applicant that a fee required to accompany the application has not been paid, specifying the amount due, the running of the 30-day period under subsection (1) is tolled until the applicant submits to the department the specified information or fee amount due. The notice shall be given in writing or by electronic notification.

(3) Subject to subsection (4), after an application for a permit is considered to be administratively complete under this section, the department shall not request from the applicant any new or additional information that is not specified in the list required under section 1303(2)(a) unless the request includes a detailed explanation of why the information is needed. The applicant is not required to provide the requested information as a condition for approval of the permit.

(4) After an application for a permit is considered to be administratively complete under this section, the department may request the applicant to clarify, amplify, or correct the information required for the application. The applicant shall provide the requested information.

## **SUBPART 2**

### **PROTECTING OVERBURDENED COMMUNITIES**

**Sec. 1331. As used in this subpart:**

(a) "Environmental justice impact statement" or "impact statement" means a written assessment of the potential environmental and public health stressors associated with the

1 proposed new or expanded facility, or with the existing major  
2 source, as applicable, including, but not limited to, both of the  
3 following:

4 (i) Any adverse environmental or public health stressors that  
5 cannot be avoided if the permit is granted.

6 (ii) Existing environmental or public health stressors  
7 affecting the overburdened community.

8 (b) "Environmental or public health stressors" means any of  
9 the following:

10 (i) Sources of pollution, including, but not limited to, mobile  
11 sources of air pollution, contaminated sites, transfer stations or  
12 other solid waste facilities, recycling facilities, scrap yards,  
13 nonpoint sources of water pollution, and point-sources of water  
14 pollution including, but not limited to, water pollution from  
15 facilities or combined sewer overflows.

16 (ii) Conditions that may cause potential public health impacts,  
17 including, but not limited to, asthma, cancer, elevated blood lead  
18 levels, cardiovascular disease, and developmental problems in the  
19 overburdened community.

20 (c) "Facility", subject to subdivision (d), means any of the  
21 following:

22 (i) A major source.

23 (ii) An incinerator.

24 (iii) A sludge processing facility, combustor, or incinerator.

25 (iv) A sewage treatment plant with a capacity of more than  
26 50,000,000 gallons per day.

27 (v) A disposal area as defined in section 11503.

28 (vi) A disposal facility as defined in section 11102.

29 (vii) A storage facility as defined in section 11104.



1 (viii) A treatment facility as defined in section 11104.

2 (ix) A concentrated animal feeding operation.

3 (x) A scrap metal facility.

4 (xi) A mine.

5 (d) "Facility" does not include an incinerator that is  
6 affiliated with a hospital or university and processes medical  
7 waste, as defined in section 13805 of the public health code, 1978  
8 PA 368, MCL 333.13805, generated by the hospital or university.

9 (e) "Limited English proficiency" describes a household that  
10 does not have an adult that speaks English "very well" according to  
11 the United States Census Bureau.

12 (f) "Low-income household" means a household that is at or  
13 below 200% of the official poverty threshold as that threshold is  
14 determined annually by the United States Census Bureau.

15 (g) "Major source" means a major source as defined in 40 CFR  
16 70.2.

17 (h) "Major source permit" means a permit issued under part 55  
18 to a major source.

19 (i) "Overburdened community" means a census block group, as  
20 determined by the United States Census Bureau for the most recent  
21 United States census, to which any of the following apply:

22 (i) At least 35% of the households are low-income households.

23 (ii) At least 40% of the residents identify as members of a  
24 minority group or a state-recognized tribal community.

25 (iii) At least 40% of the households have limited English  
26 proficiency.

27 (j) "Permit", except as used in subdivision (h) and subject to  
28 subdivision (k), means an individual permit, registration, or  
29 license issued by the department to a facility under part 31, 55,

1 111, 115, 301, 303, 323, 325, or 327 for which an application is  
2 submitted after rules are promulgated under section 1341.

3 (k) "Permit" does not include authorization or approval  
4 required for either of the following:

5 (i) To perform remedial action, as defined in section 20101.

6 (ii) To make a minor modification to a facility's major source  
7 permit for activities or improvements that do not increase air  
8 emissions.

9 Sec. 1333. Not later than 120 days after the effective date of  
10 this section, the department shall publish on its public website a  
11 list of overburdened communities in this state. The department  
12 shall update the list of overburdened communities at least once  
13 every 2 years. The department shall notify a municipality if any  
14 part of the municipality is listed as an overburdened community  
15 under this section.

16 Sec. 1335. (1) Notwithstanding any other provision of this  
17 act, the department shall not consider an application for a permit  
18 for a new facility or the expansion of an existing facility or an  
19 application for the renewal of an existing facility's major source  
20 permit to be complete if the facility is proposed to be located or  
21 is located, in whole or in part, in an overburdened community,  
22 unless the permit applicant first does all of the following:

23 (a) Prepares an environmental justice impact statement.

24 (b) Holds a public hearing in the overburdened community,  
25 subject to all of the following requirements:

26 (i) The permit applicant shall publish a notice of the public  
27 hearing in at least 2 newspapers circulating within the  
28 overburdened community, including a local non-English language  
29 newspaper, if any, not less than 60 days before the public hearing.

1 The notice shall include all of the following:

2 (A) The date, time, and location of the public hearing.

3 (B) A description of the proposed new or expanded facility or  
4 existing major source, as applicable.

5 (C) A map indicating the location of the facility.

6 (D) A brief summary of the environmental justice impact  
7 statement.

8 (E) Information on how an interested person may review a copy  
9 of the complete environmental justice impact statement.

10 (F) An address for the submittal of written comments to the  
11 permit applicant.

12 (G) Any other information that the department considers  
13 appropriate.

14 (ii) At least 60 days before the public hearing, the permit  
15 applicant shall send a copy of the notice under subparagraph (i) and  
16 the environmental justice impact statement to the department and to  
17 the governing body and the clerk of the municipality in which the  
18 overburdened community is located. Upon receipt of the impact  
19 statement, the department shall post the impact statement on its  
20 public website.

21 (iii) At the public hearing, the permit applicant shall provide  
22 clear, accurate, and complete information about the proposed new or  
23 expanded facility or existing major source and the potential  
24 environmental or public health stressors associated with the  
25 facility. The permit applicant shall accept written and oral  
26 comments from any interested party and provide an opportunity for  
27 public participation at the public hearing.

28 (iv) Not later than 10 days after the public hearing, the  
29 permit applicant shall submit to the department a transcript of the

1 public hearing and any written comments received.

2 (2) The department may require the applicant to consolidate  
3 the public hearing held pursuant to subsection (1) with any other  
4 public hearing held or required by the department regarding the  
5 permit application, if the consolidated public hearing otherwise  
6 meets the requirements of subsection (1). The department may grant  
7 a request by a permit applicant to consolidate public hearings. The  
8 consolidation of public hearings does not preclude an application  
9 from being considered complete for review pursuant to subsection  
10 (1).

11 (3) If a permit applicant is applying for more than 1 permit  
12 for a proposed new or expanded facility, the permit applicant is  
13 only required to comply with subsection (1) once, unless the  
14 department determines that more than 1 public hearing is necessary  
15 because of the complexity of the permit applications. This section  
16 does not otherwise limit the authority of the department to hold or  
17 require additional public hearings as may be required by this act.

18 Sec. 1337. (1) After the public hearing under section 1335,  
19 the department shall consider the environmental justice impact  
20 statement prepared under section 1335, written or oral comments  
21 received at or in connection with the public hearing, and any other  
22 relevant information possessed by the department.

23 (2) Notwithstanding any other provision of this act, the  
24 department shall deny an application for a permit for a new  
25 facility that is submitted after rules are promulgated under  
26 section 1341 if the department finds that approval of the permit as  
27 proposed would, together with other environmental or public health  
28 stressors affecting the overburdened community, cause or contribute  
29 to adverse cumulative environmental or public health stressors in

1 the overburdened community that are higher than those borne by  
2 other communities within this state, the county, or another  
3 geographic unit of analysis as determined under rules promulgated  
4 under section 1341. This subdivision does not apply if both of the  
5 following conditions are met:

6 (a) The department determines that the new facility will serve  
7 a compelling public interest in the community where it is to be  
8 located.

9 (b) The permit imposes conditions on the construction or  
10 operation of the facility to protect public health.

11 (3) Notwithstanding any other provision of this act, the  
12 department may impose conditions on a permit for the expansion of  
13 an existing facility or on the renewal of an existing facility's  
14 major source permit, to protect public health. The department shall  
15 not impose conditions under this subsection unless the department  
16 finds that approval of a permit or permit renewal, as proposed,  
17 would, together with other environmental or public health stressors  
18 affecting the overburdened community, cause or contribute to  
19 adverse cumulative environmental or public health stressors in the  
20 overburdened community that are higher than those borne by other  
21 communities within this state, the county, or another geographic  
22 unit of analysis as determined under rules promulgated under  
23 section 1341.

24 (4) The department shall not approve or deny an application  
25 for a permit described in section 1335(1) until at least 45 days  
26 have elapsed after the public hearing or hearings described in  
27 section 1335.

28 Sec. 1339. In addition to any other fee authorized by this  
29 act, the department shall assess each person that applies for a

1 permit a reasonable fee to cover the department's costs associated  
2 with the implementation of sections 1331 to 1337, including costs  
3 to provide technical assistance to permit applicants and  
4 overburdened communities as needed to comply with this part.

5       Sec. 1341. By 1 year after the effective date of this section,  
6 the department shall promulgate rules to implement this subpart.