

Act No. 19
Public Acts of 1990
Approved by the Governor
February 28, 1990
Filed with the Secretary of State
March 1, 1990

**STATE OF MICHIGAN
85TH LEGISLATURE
REGULAR SESSION OF 1990**

Introduced by Reps. Kosteva, Perry Bullard, Bartnik, Gubow, Leland, Weeks, DeBeaussaert,
Van Regenmorter, Hunter, DeMars and Murphy

ENROLLED HOUSE BILL No. 4137

AN ACT to amend the title and sections 2, 2a, 4, 5a, 5b, 6, 6a, 6b, 7, 8, 9, 10, and 11 of Act No. 245 of the Public Acts of 1929, entitled as amended "An act to create a water resources commission to protect and conserve the water resources of the state, to have control over the pollution of any waters of the state and the Great Lakes, to have control over the alteration of the watercourses and the flood plains of all rivers and streams, with powers to make rules governing the same, and to prescribe the powers and duties of such commission; to require the registration of manufacturing products, production materials and waste products where certain wastes are discharged; to provide for surveillance fees upon discharges to the waters of the state in order to provide for investigation, monitoring and surveillance necessary to prevent and abate water pollution; to require permits to regulate the discharge or storage of any substance which may affect the quality of the waters of the state and to establish restrictions to assure compliance with applicable state standards and to authorize the establishment of permit restrictions and programs to assure compliance with applicable federal law and regulations; to prohibit the pollution of any waters of the state and the Great Lakes; to prohibit the obstruction of the floodways of the rivers and streams of the state; to designate the commission as the state agency to cooperate and negotiate with other governments and agencies in matters concerning the water resources of the state; and to provide penalties for the violation of this act," section 6a as amended by Act No. 92 of the Public Acts of 1987, being sections 323.2, 323.2a, 323.4, 323.5a, 323.5b, 323.6, 323.6a, 323.6b, 323.7, 323.8, 323.9, 323.10, and 323.11 of the Michigan Compiled Laws; and to repeal certain parts of the act.

The People of the State of Michigan enact:

Section 1. The title and sections 2, 2a, 4, 5a, 5b, 6, 6a, 6b, 7, 8, 9, 10, and 11 of Act No. 245 of the Public Acts of 1929, section 6a as amended by Act No. 92 of the Public Acts of 1987, being sections 323.2, 323.2a, 323.4, 323.5a, 323.5b, 323.6, 323.6a, 323.6b, 323.7, 323.8, 323.9, 323.10, and 323.11 of the Michigan Compiled Laws, are amended to read as follows:

TITLE

An act to regulate, protect, and conserve the water resources of the state, to provide for the control over the pollution of any waters of the state and the Great Lakes, to provide for the control over the alteration of the watercourses and the floodplains of all rivers and streams; to create a water resources commission; to prescribe the powers and duties of certain state agencies and officials; to require the registration of manufacturing products, production materials, and waste products where certain wastes are discharged; to require permits to regulate the discharge or storage of any substance which may affect the quality of the waters of the state and to establish restrictions to assure compliance with applicable state standards and to authorize the establishment of permit restrictions and programs to assure compliance with applicable federal law and regulations; to prohibit

the pollution of any waters of the state and the Great Lakes; to prohibit the obstruction of the floodways of the rivers and streams of the state; to designate the department of natural resources as the state agency to cooperate and negotiate with other governments and agencies in matters concerning the water resources of the state; and to provide penalties and remedies for the violation of this act.

Sec. 2. (1) The commission shall organize and make its own rules and procedure and shall meet not less than once each month and shall keep a record of its proceedings. The commission shall protect and conserve the water resources of the state and shall have control of the pollution of surface or underground waters of the state and the Great Lakes, which are or may be affected by waste disposal of municipalities, industries, public or private corporations, individuals, partnership associations, or any other entity. The commission may make or cause to be made surveys, studies, and investigations of the uses of waters of the state, both surface and underground, and cooperate with other governments, and governmental units and agencies in making the surveys, studies, and investigations. The commission shall assist in an advisory capacity a flood control district which may be authorized by the legislature. The commission in the public interest shall appear and present evidence, reports, and other testimony during the hearings involving the creation and organization of flood control districts. The commission shall advise and consult with the legislature on the obligation of the state to participate in the costs of construction and maintenance as provided for in the official plans of a flood control district or intercounty drainage district. The commission shall enforce this act and shall promulgate rules as considered necessary to carry out its duties under this act.

(2) The business which the commission may perform shall be conducted at a public meeting of the commission held in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of the meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976.

(3) A writing prepared, owned, used, in the possession of, or retained by the commission in the performance of an official function shall be made available to the public in compliance with the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

Sec. 2a. (1) The department is designated the state agency to cooperate and negotiate with other governments, governmental units and governmental agencies in matters concerning the water resources of the state, including but not limited to flood control, beach erosion control and water quality control planning, development, and management. The department shall have control over the alterations of natural or present watercourses of all rivers and streams in the state to assure that the channels and the portions of the floodplains that are the floodways are not inhabited and are kept free and clear of interference or obstruction which will cause any undue restriction of the capacity of the floodway. The department may take such steps as may be necessary to take advantage of any act of congress that may be of assistance in carrying out the purposes of this act including the water resources planning act, Public Law 89-80, as amended, 42 U.S.C. 1962 to 1962-1 and 1962a to 1962d-3 and the federal water pollution control act, as amended, chapter 758, 86 Stat. 816, 33 U.S.C. 1251 to 1252, 1253 to 1254, 1255 to 1257, 1258 to 1263, 1265 to 1268, 1281, 1282 to 1293, 1294 to 1299, 1311 to 1313, 1314 to 1326, 1328 to 1330, 1341 to 1345, 1361 to 1377, and 1381 to 1387.

(2) The department shall report to the governor and to the legislature at least once in each year any plans or projects being carried on or considered and shall include in the report requests for any legislation needed to carry out any proposed projects or agreements made necessary thereby, together with any requests for appropriations. The department may make recommendations to the governor on the designation of areawide water quality planning regions and organizations relative to the governor's responsibilities under the federal water pollution control act.

Sec. 4. The department or any agent appointed by the department may enter at all reasonable times in or upon any private or public property for the purpose of inspecting and investigating conditions relating to the pollution of any waters and the obstruction of the floodways of the rivers and streams of this state. The department may call upon any officer, board, department, school, university, or other state institution and the officers or employees thereof for any assistance considered necessary to the carrying out of this act.

Sec. 5a. The department may promulgate rules and issue orders for the prevention of harmful interference with the discharge and stage characteristics of streams. The department may ascertain and determine for record and in making its order the location and extent of floodplains, stream beds, and channels and the discharge and stage characteristics of streams at various times and circumstances.

Sec. 5b. A person shall not occupy or permit the occupation for residential, commercial, or industrial purposes of lands or to fill or grade or permit the filling or grading for any purposes other than agricultural, of lands in the floodplains, stream bed, or channel of any stream, as ascertained and determined for record by the department, or to undertake or engage in any activity on or with respect to the lands which is determined by

the department to harmfully interfere with the discharge or stage characteristics of a stream, unless the occupation, filling, grading or other activity is permitted by an order or rule of the department or by a valid permit issued by the department under the provisions of law.

Sec. 6. (1) It shall be unlawful for any person directly or indirectly to discharge into the waters of the state any substance which is or may become injurious to the public health, safety, or welfare; or which is or may become injurious to domestic, commercial, industrial, agricultural, recreational, or other uses which are being or may be made of such waters; or which is or may become injurious to the value or utility of riparian lands; or which is or may become injurious to livestock, wild animals, birds, fish, aquatic life, or plants or the growth or propagation thereof be prevented or injuriously affected; or whereby the value of fish and game is or may be destroyed or impaired.

(2) The discharge of any raw sewage of human origin, directly or indirectly into any of the waters of the state shall be considered prima facie evidence of a violation of this act by the municipality in which the discharge originated unless the discharge shall have been permitted by an order or rule of the commission. If the discharge is not the subject of a valid permit issued by the commission, a municipality responsible for the discharge may be subject to the remedies provided in section 10. If the discharge is the subject of a valid permit issued by the commission pursuant to section 7, and is in violation of that permit, a municipality responsible for the discharge shall be subject to the penalties prescribed in section 10.

(3) Unless authorized by permit, order, or rule of the commission or the department, the discharge into the waters of this state of any medical waste, as defined in part 138 of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.13801 to 333.13831 of the Michigan Compiled Laws, shall be prima facie evidence of a violation of this act and shall subject the person responsible to the penalties prescribed in section 10.

(4) A violation of this section shall be prima facie evidence of the existence of a public nuisance and in addition to the remedies provided for in this act may be abated according to law in an action brought by the attorney general in a court of competent jurisdiction.

Sec. 6a. (1) Every industrial or commercial entity that discharges liquid wastes into any surface water or groundwater or underground or on the ground other than through a public sanitary sewer shall have waste treatment or control facilities under the specific supervision and control of persons who have been certified by the department as properly qualified to operate the facilities. The department shall examine all supervisory personnel having supervision and control of the facilities and certify the persons properly qualified to operate or supervise the facilities.

(2) The department may conduct a program for training persons seeking to be certified as operators or supervisors under subsection (1) or seeking to be certified as operators or supervisors of municipal wastewater treatment facilities. The department, with the annual approval of the commission, may charge a fee based on the costs to the department of operating the training program. The fees shall be deposited in the state treasury and credited to a separate fund and used to conduct the training program. Any unexpended fees collected pursuant to this subsection, along with any excess collections from prior fiscal years, shall be carried over into subsequent fiscal years and shall be available for appropriation for the purposes of conducting the program described in this subsection.

(3) A person certified as required by subsection (1) shall file monthly, or at such longer intervals as the commission may designate, on forms provided by the commission, reports showing the effectiveness of the treatment or control facility operation and the quantity and quality of liquid wastes so discharged. A person who knowingly makes a false statement in a report may have his or her certificate as an approved treatment facility operator revoked.

(4) This section shall not apply to water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well is used either to facilitate production or for disposal purposes and is under permit by the state supervisor of wells.

Sec. 6b. Every person, doing business within this state discharging wastewater to the waters of the state or to any sewer system, which contains wastes in addition to sanitary sewage shall file annually reports on forms provided by the department setting forth the nature of the enterprise, indicating the quantities of materials used in and incidental to its manufacturing processes and including by-products and waste products, which appear on a register of critical materials as compiled by the department with the advice of an advisory committee of environmental specialists designated by the department and the estimated annual total number of gallons of wastewater including but not limited to process and cooling water to be discharged to the waters of the state or to any sewer system. The information shall be used by the department only for purposes of water pollution control. The department shall provide proper and adequate facilities and procedures to safeguard the

confidentiality of manufacturing proprietary processes except that confidentiality shall not extend to waste products discharged to the waters of the state. Operations of a business or industry which violate this section may be enjoined by action commenced by the attorney general, in a court of competent jurisdiction. The department shall promulgate rules as it considers necessary to effectuate the administration of this section, including where necessary to meet special circumstances, reporting more frequently than annually.

Sec. 7. (1) A person shall not discharge any waste or waste effluent into the waters of this state unless the person is in possession of a valid permit from the commission. Compliance with the terms of an outstanding order of determination or final order of determination or stipulation with the commission that is in effect on April 15, 1973, shall be considered to meet the requirements of this section until the commission issues its permit. The commission shall condition the continued validity of a permit upon the permittee's accomplishment of such effluent requirements as the commission considers necessary to prevent unlawful pollution by such dates as the commission considers to be reasonable and necessary and to assure compliance with applicable federal law and regulations. If the commission finds that the terms of a permit have been, are being, or may be violated, it may modify, suspend, or revoke the permit or grant the permittee a reasonable period of time in which to comply with the permit. The commission may reissue a revoked permit upon a showing satisfactory to the commission that the permittee has corrected the violation. A person who has had a permit revoked may apply for a new permit.

(2) Whenever in the opinion of the department a person is causing or is about to cause unlawful pollution of the waters of this state, the department may notify the alleged offender of its determination and enter an order requiring the person to abate the pollution or refer the matter to the attorney general for legal action, or both.

(3) A person who is aggrieved by an order of abatement of the department or by the reissuance, modification, suspension, or revocation of an existing permit of the commission executed pursuant to section 7 may file a sworn petition with the department or the commission, as appropriate, setting forth the grounds and reasons for the complaint and asking for a contested case hearing on the matter pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws. A petition filed more than 60 days after action on the order or permit may be rejected by the department or commission as being untimely.

Sec. 8. (1) A person who seeks a new or increased use of the waters of the state for sewage or other waste disposal purposes shall file with the commission an application setting forth the information required by the commission, including the nature of the enterprise or development contemplated, the amount of water required to be used, its source, the proposed point of discharge of the wastes into the waters of the state, the estimated amount to be discharged, and a statement setting forth the expected bacterial, physical, chemical, and other known characteristics of the wastes.

(2) Within 180 days after receipt of a complete application, the commission shall either grant or deny a permit, unless the applicant and the commission agree to extend this time period. If granted, the commission shall condition the permit upon such restrictions, in the judgment of the commission, as may be necessary to adequately guard against unlawful uses of the waters of the state as are set forth in section 6.

(3) If the permit or denial of a new or increased use is not acceptable to the permittee, the applicant or any other person, the permittee, the applicant, or other person may file a sworn petition with the commission setting forth the grounds and reasons for the complaint and asking for a contested case hearing on the matter pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws. A petition filed more than 60 days after action on the permit application may be rejected by the commission as being untimely.

Sec. 9. An employee of the department or an employee of another governmental agency appointed by the department may, with the concurrence of the department, enforce this act and may make a criminal complaint against any person violating this act.

Sec. 10. (1) The department or the commission may request the attorney general to commence a civil action for appropriate relief, including a permanent or temporary injunction, for a violation of this act or the provisions of a permit, order, rule, or stipulation of the department or the commission. An action under this subsection may be brought in the circuit court for the county of Ingham or for the county in which the defendant is located, resides, or is doing business. The court has jurisdiction to restrain the violation and to require compliance. In addition to any other relief granted under this subsection, the court shall impose a civil fine of not less than \$2,500.00 and may award reasonable attorney fees and costs to the prevailing party. However, the maximum fine imposed by the court shall be not more than \$25,000.00 per day of violation.

(2) A person who at the time of the violation, knew or should have known that he or she discharged a substance contrary to this act, or contrary to the provisions of a permit, order, rule, or stipulation of the

department or the commission, or who intentionally makes a false statement, representation, or certification in an application for, or form pertaining to a permit, or in a notice or report required by the terms and conditions of an issued permit, or who intentionally renders inaccurate a monitoring device or record required to be maintained by the commission, is guilty of a felony and shall be fined not less than \$2,500.00 or more than \$25,000.00 for each violation. The court may impose an additional fine of not more than \$25,000.00 for each day during which the unlawful discharge occurred. If the conviction is for a violation committed after a first conviction of the person under this subsection, the court shall impose a fine of not less than \$25,000.00 per day and not more than \$50,000.00 per day of violation. Upon conviction, in addition to a fine, the court in its discretion may sentence the defendant to imprisonment for not more than 2 years or impose probation upon a person for a violation of this act. With the exception of the issuance of criminal complaints, issuance of warrants, and the holding of an arraignment, the circuit court for the county in which the violation occurred has exclusive jurisdiction. However, the person shall not be subject to the penalties of this subsection if the discharge of the effluent is in conformance with and obedient to a rule, order, or permit of the commission. In addition to a fine, the attorney general may file a civil suit in a court of competent jurisdiction to recover the full value of the injuries done to the natural resources of the state and the costs of surveillance and enforcement by the state resulting from the violation.

(3) Upon a finding by the court that the actions of a civil defendant pose or posed a substantial endangerment to public health, safety, or welfare, the court shall impose, in addition to the penalties set forth in subsection (1), a fine of not less than \$500,000.00 and not more than \$5,000,000.00.

(4) Upon a finding by the court that the action of a criminal defendant pose or posed a substantial endangerment to public health, safety, or welfare, the court shall impose, in addition to the penalties set forth in subsection (2), a fine of not less than \$1,000,000.00 and, in addition to a fine, a sentence of 5 years' imprisonment.

(5) To find a defendant civilly or criminally liable for substantial endangerment under subsections (3) and (4), the court shall determine that the defendant knowingly or recklessly acted in such a manner as to cause a danger of death or serious bodily injury and that either of the following has occurred:

(a) The defendant had an actual awareness, or belief, or understanding, that his or her conduct would cause a substantial danger of death or serious bodily injury.

(b) The defendant acted in gross disregard of the standard of care which any reasonable person should observe in similar circumstances.

(6) Knowledge possessed by a person other than the defendant under subsection (5) may be attributable to the defendant if the defendant took affirmative steps to shield himself or herself from the relevant information.

(7) Any fine or other award ordered paid pursuant to this section shall do both of the following:

(a) Be payable to the state of Michigan and credited to the general fund.

(b) Constitute a lien on any property, of any nature or kind, owned by the defendant.

(8) A lien under subsection (7)(b) shall take effect and have priority over all other liens and encumbrances except those filed or recorded prior to the date of judgment only if notice of the lien is filed or recorded as required by state or federal law.

(9) A lien filed or recorded pursuant to subsection (8) shall be terminated according to the procedures required by state or federal law within 14 days after the fine or other award ordered to be paid is paid.

(10) In addition to any other method of collection, any fine or other award ordered paid may be recovered by right of setoff to any debt owed to the defendant by the state of Michigan, including the right to a refund of income taxes paid.

Sec. 11. As used in this act:

(a) "Commission" means the water resources commission.

(b) "Department" means the department of natural resources.

(c) "Municipality" means the state, a county, city, village or township, or an agency or instrumentality of any of these entities.

(d) "Person" means an individual, municipality, industry, public or private corporation, copartnership, firm or any other entity whatsoever.

(e) "Rule" means a rule promulgated pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(f) "Waters of the state" means groundwaters, lakes, rivers and streams and all other watercourses and waters within the confines of the state and also the Great Lakes bordering the state.

Section 2. Section 3 of Act No. 245 of the Public Acts of 1929, being section 323.3 of the Michigan Compiled Laws, is repealed.

Section 3. This amendatory act shall take effect upon the expiration of 90 days after the date of its enactment.

Section 4. This amendatory act shall not take effect unless House Bill No. 4136 of the 85th Legislature is enacted into law.

This act is ordered to take immediate effect.

.....
Clerk of the House of Representatives.

.....
Secretary of the Senate.

Approved.....

.....
Governor.