

SENATE BILL No. 447

April 25, 2007, Introduced by Senators BROWN, BIRKHOLZ, GARCIA, JANSEN, BARCIA and KAHN and referred to the Committee on Agriculture.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending section 3112 (MCL 324.3112), as amended by 2005 PA 33.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3112. (1) A person shall not discharge any waste or waste
2 effluent into the waters of this state unless the person is in
3 possession of a valid permit from the department.

4 (2) An application for a permit under subsection (1) shall be
5 submitted to the department. Within 30 days after an application
6 for a new or increased use is received, the department shall
7 determine whether the application is administratively complete.
8 Within 90 days after an application for reissuance of a permit is
9 received, the department shall determine whether the application is

1 administratively complete. If the department determines that an
2 application is not complete, the department shall notify the
3 applicant in writing within the applicable time period. If the
4 department does not make a determination as to whether the
5 application is complete within the applicable time period, the
6 application shall be considered to be complete.

7 (3) The department shall condition the continued validity of a
8 permit upon the permittee's meeting the effluent requirements that
9 the department considers necessary to prevent unlawful pollution by
10 the dates that the department considers to be reasonable and
11 necessary and to assure compliance with applicable federal law and
12 regulations. If the department finds that the terms of a permit
13 have been, are being, or may be violated, it may modify, suspend,
14 or revoke the permit or grant the permittee a reasonable period of
15 time in which to comply with the permit. The department may reissue
16 a revoked permit upon a showing satisfactory to the department that
17 the permittee has corrected the violation. A person who has had a
18 permit revoked may apply for a new permit.

19 (4) If the department determines that a person is causing or
20 is about to cause unlawful pollution of the waters of this state,
21 the department may notify the alleged offender of its determination
22 and enter an order requiring the person to abate the pollution or
23 refer the matter to the attorney general for legal action, or both.

24 (5) A person who is aggrieved by an order of abatement of the
25 department or by the reissuance, modification, suspension, or
26 revocation of an existing permit of the department executed
27 pursuant to this section may file a sworn petition with the

1 department setting forth the grounds and reasons for the complaint
2 and asking for a contested case hearing on the matter pursuant to
3 the administrative procedures act of 1969, 1969 PA 306, MCL 24.201
4 to 24.328. A petition filed more than 60 days after action on the
5 order or permit may be rejected by the department as being
6 untimely.

7 (6) Beginning January 1, 2007, all oceangoing vessels engaging
8 in port operations in this state shall obtain a permit from the
9 department. The department shall issue a permit for an oceangoing
10 vessel only if the applicant can demonstrate that the oceangoing
11 vessel will not discharge aquatic nuisance species or, if the
12 oceangoing vessel discharges ballast water or other waste or waste
13 effluent, that the operator of the vessel will utilize
14 environmentally sound technology and methods, as determined by the
15 department, ~~that can be used~~ to prevent the discharge of aquatic
16 nuisance species. The department shall cooperate to the fullest
17 extent practical with other Great Lakes basin states, the Canadian
18 Great Lakes provinces, the Great Lakes panel on aquatic nuisance
19 species, the Great Lakes fishery commission, the international
20 joint commission, and the Great Lakes commission to ensure
21 development of standards for the control of aquatic nuisance
22 species that are broadly protective of the waters of the state and
23 other natural resources. Permit fees for permits under this
24 subsection shall be assessed as provided in section 3120. The
25 permit fees for an individual permit issued under this subsection
26 shall be the fees specified in section 3120(1)(a) and (5)(a). The
27 permit fees for a general permit issued under this subsection shall

1 be the fees specified in section 3120(1)(c) and (5)(b)(i). Permits
2 under this subsection shall be issued in accordance with the
3 timelines provided in section 3120. The department may promulgate
4 rules to implement this subsection.

5 (7) IF THE OWNER OR OPERATOR OF A LARGE CAFO IS CONVICTED OF A
6 VIOLATION OF THIS PART OR FOUND RESPONSIBLE FOR A CIVIL VIOLATION
7 OF THIS PART BY A COURT, BOTH OF THE FOLLOWING APPLY:

8 (A) THE OWNER OR OPERATOR SHALL NOT INCREASE THE NUMBER OF
9 ANIMAL UNITS AT THE LARGE CAFO.

10 (B) THE DEPARTMENT SHALL NOT MODIFY OR REISSUE A PERMIT UNDER
11 THIS SECTION OR ISSUE A NEW PERMIT TO THAT OWNER OR OPERATOR UNLESS
12 ALL OF THE FOLLOWING CONDITIONS ARE MET:

13 (i) THE OWNER OR OPERATOR HAS FULLY COMPLIED WITH THE COURT'S
14 REQUIREMENTS TO CONDUCT ANY NECESSARY REMEDIATION DUE TO THE
15 VIOLATION.

16 (ii) THE OWNER OR OPERATOR IS IN COMPLIANCE WITH THIS ACT AND
17 THE RULES PROMULGATED UNDER THIS ACT.

18 (iii) THE OWNER OR OPERATOR IS IN COMPLIANCE WITH SUBSECTIONS
19 (8) AND (9), AS APPROPRIATE.

20 (8) BEGINNING OCTOBER 1, 2007, SUBJECT TO SUBSECTION (9), THE
21 FOLLOWING PERSONS SHALL OBTAIN A MECHANISM OF FINANCIAL ASSURANCE,
22 TO THE SATISFACTION OF THE DEPARTMENT, IN AN AMOUNT EQUAL TO
23 \$100,000.00, THAT MAY BE ACCESSED BY THE DEPARTMENT IF NECESSARY TO
24 REMEDIATE ANY ENVIRONMENTAL HARM CAUSED BY A VIOLATION OF A PERMIT
25 ISSUED UNDER THIS PART:

26 (A) THE OWNER OR OPERATOR OF A NEW LARGE CAFO.

27 (B) THE OWNER OR OPERATOR OF A PERMITTED LARGE CAFO THAT HAS

1 BEEN CONVICTED OF A VIOLATION OF THIS PART OR FOUND RESPONSIBLE FOR
2 A CIVIL VIOLATION OF THIS PART BY A COURT.

3 (C) THE OWNER OR OPERATOR OF A LARGE CAFO THAT IS NOT IN
4 COMPLIANCE WITH GENERALLY ACCEPTED AGRICULTURAL AND MANAGEMENT
5 PRACTICES FOR SITE SELECTION AND ODOR CONTROLS AS DETERMINED BY THE
6 DEPARTMENT OF AGRICULTURE UNDER THE MICHIGAN RIGHT TO FARM ACT,
7 1981 PA 93, MCL 286.471 TO 286.474.

8 (9) THE DEPARTMENT MAY REQUIRE A MECHANISM OF FINANCIAL
9 ASSURANCE IN AN AMOUNT GREATER THAN \$100,000.00 BUT NOT MORE THAN
10 \$1,000,000.00, IF THE DEPARTMENT DETERMINES THAT A HIGHER AMOUNT IS
11 NECESSARY BASED UPON A HISTORY OF VIOLATIONS BY THE OWNER OR
12 OPERATOR OR A HISTORY OF VIOLATIONS AT THE LARGE CAFO.

13 Enacting section 1. This amendatory act does not take effect
14 unless Senate Bill No. 448

15 of the 94th Legislature is enacted into law.