

SENATE BILL No. 504

May 15, 2007, Introduced by Senators VAN WOERKOM, GILBERT, JELINEK, KUIPERS, PATTERSON, CROUSEY and STAMAS and referred to the Committee on Agriculture.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 3101, 3109, 3112, 3115, 5303, 8201, 8202, 8203, 8206, 8801, 8802, and 8803 (MCL 324.3101, 324.3109, 324.3112, 324.3115, 324.5303, 324.8201, 324.8202, 324.8203, 324.8206, 324.8801, 324.8802, and 324.8803), section 3101 as amended by 2006 PA 97, section 3109 as amended by 2005 PA 241, section 3112 as amended by 2005 PA 33, section 3115 as amended by 2004 PA 143, section 5303 as amended by 2002 PA 398, sections 8201, 8202, 8203, and 8206 as added by 2001 PA 176, and sections 8801, 8802, and 8803 as added by 1998 PA 287, and by adding section 8209.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3101. As used in this part:

1 (A) "AGRICULTURAL STORM WATER DISCHARGE" MEANS A
2 PRECIPITATION-RELATED DISCHARGE FROM A MAEAP-VERIFIED FARM THAT, AT
3 THE TIME OF DISCHARGE, IS MANAGED IN ACCORDANCE WITH THE SITE-
4 SPECIFIC NUTRIENT MANAGEMENT PLAN APPROVED UNDER THAT VERIFICATION.

5 (B) "ANIMAL FEEDING OPERATION" OR "AFO" MEANS A LOT OR
6 FACILITY, OTHER THAN AN AQUACULTURE FACILITY, WHERE ANIMALS, OTHER
7 THAN AQUACULTURE SPECIES, HAVE BEEN, ARE, OR WILL BE STABLED OR
8 CONFINED AND FED OR MAINTAINED FOR A TOTAL OF 45 DAYS OR MORE IN
9 ANY 12-MONTH PERIOD, AND CROPS, VEGETATION, FORAGE GROWTH, OR
10 POSTHARVEST RESIDUES ARE NOT SUSTAINED IN THE NORMAL GROWING SEASON
11 OVER ANY PORTION OF THE LOT OR FACILITY.

12 (C) ~~(a)~~—"Aquatic nuisance species" means a nonindigenous
13 species that threatens the diversity or abundance of native species
14 or the ecological stability of infested waters, or commercial,
15 agricultural, aquacultural, or recreational activities dependent on
16 such waters.

17 (D) ~~(b)~~—"Ballast water" means water and associated solids
18 taken on board a vessel to control or maintain trim, draft,
19 stability, or stresses on the vessel, without regard to the manner
20 in which it is carried.

21 (E) ~~(e)~~—"Ballast water treatment method" means a method of
22 treating ballast water and sediments to remove or destroy living
23 biological organisms through 1 or more of the following:

24 (i) Filtration.

25 (ii) The application of biocides or ultraviolet light.

26 (iii) Thermal methods.

27 (iv) Other treatment techniques approved by the department.

1 (F) ~~(d)~~—"Department" means the department of environmental
2 quality.

3 (G) ~~(e)~~—"Detroit consumer price index" means the most
4 comprehensive index of consumer prices available for the Detroit
5 area from the United States department of labor, bureau of labor
6 statistics.

7 (H) ~~(f)~~—"Emergency management coordinator" means that term as
8 defined in section 2 of the emergency management act, 1976 PA 390,
9 MCL 30.402.

10 (I) ~~(g)~~—"Great Lakes" means the Great Lakes and their
11 connecting waters, including Lake St. Clair.

12 (J) ~~(h)~~—"Group 1 facility" means a facility whose discharge is
13 described by R 323.2218 of the Michigan administrative code.

14 (K) ~~(i)~~—"Group 2 facility" means a facility whose discharge is
15 described by R 323.2210(y), R 323.2215, or R 323.2216 of the
16 Michigan administrative code.

17 (L) ~~(j)~~—"Group 3 facility" means a facility whose discharge is
18 described by R 323.2211 or R 323.2213 of the Michigan
19 administrative code.

20 (M) "LARGE CAFO" IS AN AFO THAT STABLES OR CONFINES AS MANY AS
21 OR MORE THAN THE NUMBERS OF ANIMALS SPECIFIED IN ANY OF THE
22 FOLLOWING CATEGORIES:

23 (i) 700 MATURE DAIRY COWS, WHETHER MILKED OR DRY.

24 (ii) 1,000 VEAL CALVES.

25 (iii) 1,000 CATTLE OTHER THAN MATURE DAIRY COWS OR VEAL CALVES.
26 CATTLE INCLUDES HEIFERS, STEERS, BULLS, AND COW/CALF PAIRS.

27 (iv) 2,500 SWINE EACH WEIGHING 55 POUNDS OR MORE.

1 (v) 10,000 SWINE EACH WEIGHING LESS THAN 55 POUNDS.

2 (vi) 500 HORSES.

3 (vii) 10,000 SHEEP OR LAMBS.

4 (viii) 55,000 TURKEYS.

5 (ix) 30,000 LAYING HENS OR BOILERS, IF THE AFO USES A LIQUID
6 MANURE HANDLING SYSTEM.

7 (x) 125,000 CHICKENS, OTHER THAN LAYING HENS, IF THE AFO USES
8 OTHER THAN A LIQUID MANURE HANDLING SYSTEM.

9 (xi) 82,000 LAYING HENS, IF THE AFO USES OTHER THAN A LIQUID
10 MANURE HANDLING SYSTEM.

11 (xii) 30,000 DUCKS, IF THE AFO USES OTHER THAN A LIQUID MANURE
12 HANDLING SYSTEM.

13 (xiii) 5,000 DUCKS, IF THE AFO USES A LIQUID MANURE HANDLING
14 SYSTEM.

15 (N) ~~(k)~~—"Local health department" means that term as defined
16 in section 1105 of the public health code, 1978 PA 368, MCL
17 333.1105.

18 (O) ~~(l)~~—"Local unit" means a county, city, village, or township
19 or an agency or instrumentality of any of these entities.

20 (P) "MAEAP-VERIFIED FARM" MEANS THAT TERM AS IT IS DEFINED IN
21 SECTION 8201.

22 (Q) "MAEAP-VERIFIED LARGE CAFO" MEANS A LARGE CAFO THAT HAS
23 BEEN VERIFIED UNDER SECTION 8203 AND IS MANAGED IN ACCORDANCE WITH
24 GENERALLY ACCEPTED AGRICULTURAL AND MANAGEMENT PRACTICES UNDER THE
25 MICHIGAN RIGHT TO FARM ACT, 1981 PA 93, MCL 286.471 TO 286.474,
26 RELATED TO SITING, ODOR, AND MANURE MANAGEMENT AS DETERMINED BY THE
27 DIRECTOR OF THE DEPARTMENT OF AGRICULTURE.

1 **(R)** ~~(m)~~—"Municipality" means this state, a county, city,
2 village, or township, or an agency or instrumentality of any of
3 these entities.

4 **(S)** ~~(n)~~—"National response center" means the national
5 communications center established under the clean water act, 33 USC
6 1251 to 1387, located in Washington, DC, that receives and relays
7 notice of oil discharge or releases of hazardous substances to
8 appropriate federal officials.

9 **(T)** ~~(e)~~—"Nonocean-going vessel" means a vessel that is not an
10 ocean-going vessel.

11 **(U)** ~~(p)~~—"Ocean-going vessel" means a vessel that operates on
12 the Great Lakes or the St. Lawrence waterway after operating in
13 waters outside of the Great Lakes or the St. Lawrence waterway.

14 **(V)** ~~(q)~~—"Open water disposal of contaminated dredge materials"
15 means the placement of dredge materials contaminated with toxic
16 substances as defined in R 323.1205 of the Michigan administrative
17 code into the open waters of the waters of the state but does not
18 include the siting or use of a confined disposal facility
19 designated by the United States army corps of engineers or beach
20 nourishment activities utilizing uncontaminated materials.

21 **(W)** ~~(r)~~—"Primary public safety answering point" means that
22 term as defined in section 102 of the emergency telephone service
23 enabling act, 1986 PA 32, MCL 484.1102.

24 **(X)** ~~(s)~~—"Sediments" means any matter settled out of ballast
25 water within a vessel.

26 **(Y)** ~~(t)~~—"Sewage sludge" means sewage sludge generated in the
27 treatment of domestic sewage, other than only septage or industrial

1 waste.

2 (Z) ~~(u)~~ "Sewage sludge derivative" means a product for land
3 application derived from sewage sludge that does not include solid
4 waste or other waste regulated under this act.

5 (AA) ~~(v)~~ "Sewage sludge generator" means a person who
6 generates sewage sludge that is applied to land.

7 (BB) ~~(w)~~ "Sewage sludge distributor" means a person who
8 applies, markets, or distributes, except at retail, a sewage sludge
9 derivative.

10 (CC) ~~(x)~~ "St. Lawrence waterway" means the St. Lawrence river,
11 the St. Lawrence seaway, and the gulf of St. Lawrence.

12 (DD) ~~(y)~~ "Threshold reporting quantity" means that term as
13 defined in R 324.2002 of the Michigan administrative code.

14 (EE) ~~(z)~~ "Waters of the state" means groundwaters, lakes,
15 rivers, and streams and all other watercourses and waters,
16 including the Great Lakes, within the jurisdiction of this state.

17 Sec. 3109. (1) A person shall not directly or indirectly
18 discharge into the waters of the state a substance that is or may
19 become injurious to any of the following:

20 (a) To the public health, safety, or welfare.

21 (b) To domestic, commercial, industrial, agricultural,
22 recreational, or other uses that are being made or may be made of
23 such waters.

24 (c) To the value or utility of riparian lands.

25 (d) To livestock, wild animals, birds, fish, aquatic life, or
26 plants or to their growth or propagation.

27 (e) To the value of fish and game.

1 (2) The discharge of any raw sewage of human origin, directly
2 or indirectly, into any of the waters of the state ~~shall be~~
3 ~~considered~~ **IS** prima facie evidence of a violation of this part by
4 the municipality in which the discharge originated unless the
5 discharge is permitted by an order or rule of the department. If
6 the discharge is not the subject of a valid permit issued by the
7 department, a municipality responsible for the discharge may be
8 subject to the remedies provided in section 3115. If the discharge
9 is the subject of a valid permit issued by the department pursuant
10 to section 3112, and is in violation of that permit, a municipality
11 responsible for the discharge is subject to the penalties
12 prescribed in section 3115.

13 (3) Notwithstanding subsection (2), a municipality is not
14 responsible or subject to the remedies provided in section 3115 for
15 an unauthorized discharge from a sewerage system as defined in
16 section 4101 that is permitted under this part and owned by a party
17 other than the municipality, unless the municipality has accepted
18 responsibility in writing for the sewerage system and, with respect
19 to the civil fine and penalty under section 3115, the municipality
20 has been notified in writing by the department of its
21 responsibility for the sewerage system.

22 (4) Unless authorized by a permit, order, or rule of the
23 department, the discharge into the waters of this state of any
24 medical waste, as defined in part 138 of the public health code,
25 1978 PA 368, MCL 333.13801 to 333.13831, is prima facie evidence of
26 a violation of this part and subjects the responsible person to the
27 penalties prescribed in section 3115.

1 (5) Beginning January 1, 2007, unless a discharge is
2 authorized by a permit, order, or rule of the department, the
3 discharge into the waters of this state from an oceangoing vessel
4 of any ballast water is prima facie evidence of a violation of this
5 part and subjects the responsible person to the penalties
6 prescribed in section 3115.

7 (6) A violation of this section is prima facie evidence of the
8 existence of a public nuisance and in addition to the remedies
9 provided for in this part may be abated according to law in an
10 action brought by the attorney general in a court of competent
11 jurisdiction.

12 (7) **NOTWITHSTANDING ANY OTHER PROVISION OF THIS PART, AN**
13 **AGRICULTURAL STORM WATER DISCHARGE SHALL NOT BE CONSIDERED A**
14 **VIOLATION OF THIS PART OR THE RULES PROMULGATED UNDER THIS PART.**

15 (8) **THE DEPARTMENT SHALL REVIEW AND PROVIDE ENVIRONMENTAL**
16 **INPUT TO THE DEPARTMENT OF AGRICULTURE ON ALL GENERALLY ACCEPTED**
17 **AGRICULTURAL AND MANAGEMENT PRACTICES ESTABLISHED UNDER THE**
18 **MICHIGAN RIGHT TO FARM ACT, 1981 PA 93, MCL 286.471 TO 286.474,**
19 **DESIGNED TO PROTECT WATER RESOURCES.**

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

23 (2) An application for a permit under subsection (1) shall be
24 submitted to the department. Within 30 days after an application
25 for a new or increased use is received, the department shall
26 determine whether the application is administratively complete.
27 Within 90 days after an application for reissuance of a permit is

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

8 (3) The department shall condition the continued validity of a
9 permit upon the permittee's meeting the effluent requirements that
10 the department considers necessary to prevent unlawful pollution by
11 the dates that the department considers to be reasonable and
12 necessary and to assure compliance with applicable federal law and
13 regulations. If the department finds that the terms of a permit
14 have been, are being, or may be violated, it may modify, suspend,
15 or revoke the permit or grant the permittee a reasonable period of
16 time in which to comply with the permit. The department may reissue
17 a revoked permit upon a showing satisfactory to the department that
18 the permittee has corrected the violation. A person who has had a
19 permit revoked may apply for a new permit. **IF THE OWNER OR OPERATOR**
20 **OF A LARGE CAFO IS CONVICTED OF A VIOLATION OF THIS PART OR FOUND**
21 **RESPONSIBLE FOR A CIVIL VIOLATION UNDER SECTION 3115 BY A COURT,**
22 **THE DEPARTMENT SHALL NOT REISSUE A PERMIT UNDER THIS SECTION OR**
23 **ISSUE A NEW PERMIT TO THAT OWNER OR OPERATOR UNLESS ALL OF THE**
24 **FOLLOWING CONDITIONS ARE MET:**

25 (A) **THE PERMIT PROHIBITS THE EXPANSION OF THE ANIMAL FEEDING**
26 **OPERATION OR ANY NEW ANIMAL FEEDING OPERATION WHICH, CUMULATIVELY,**
27 **WOULD EXCEED THE ANIMAL PRODUCTION CAPACITY AT THE AFO ON THE DATE**

1 OF THE VIOLATION FOR A PERIOD OF 3 YEARS AFTER THE DATE OF THE
2 COURT ACTION.

3 (B) THE PERMIT APPLICANT HAS FULLY COMPLIED WITH ANY
4 REQUIREMENTS OF THE COURT AND IS IN COMPLIANCE WITH THIS PART AND
5 THE RULES PROMULGATED UNDER THIS PART.

6 (C) THE PERMIT REQUIRES ALL OF THE FOLLOWING:

7 (i) THAT THE PERMITTEE ANNUALLY TEST THE WATER QUALITY OF
8 AMBIENT WATERS IN THE VICINITY OF THE AFO TO ASSURE COMPLIANCE WITH
9 STATE WATER QUALITY STANDARDS AND REPORT THAT INFORMATION TO THE
10 DEPARTMENT.

11 (ii) THAT THE PERMITTEE ANNUALLY TEST SOIL SAMPLES AT THE
12 LOCATION OF THE AFO FOR PHOSPHORUS AND REPORT THAT INFORMATION TO
13 THE DEPARTMENT.

14 (iii) THAT THE PERMITTEE AGREE TO DISCONTINUE MANURE
15 APPLICATIONS AT THE AFO IF THE BRAY P1 SOIL TEST IS IN EXCESS OF
16 150 PARTS PER MILLION UNTIL NUTRIENT USE BY CROPS REDUCES
17 PHOSPHORUS TEST LEVELS LESS THAN 150 PARTS PER MILLION.

18 (iv) THAT THE PERMITTEE OBTAIN A BOND OR OTHER MECHANISM OF
19 FINANCIAL ASSURANCE APPROVED BY THE DEPARTMENT IN AN AMOUNT NOT
20 LESS THAN \$100,000.00 THAT MAY BE ACCESSED BY THE DEPARTMENT FOR
21 REMEDIATION IN THE EVENT OF A DISCHARGE.

22 (4) THE RESULTS OF TESTING UNDER SUBSECTION (3)(C) ARE EXEMPT
23 FROM THE FREEDOM OF INFORMATION ACT, 1976 PA 442, MCL 15.231 TO
24 15.246, UNLESS THE DEPARTMENT DETERMINES THAT WATER QUALITY
25 STANDARDS IN AMBIENT WATERS IN THE VICINITY OF THE AFO HAVE BEEN
26 CAUSED BY THE LARGE CAFO.

27 (5) ~~(4)~~—If the department determines that a person is causing

1 or is about to cause unlawful pollution of the waters of this
2 state, the department may notify the alleged offender of its
3 determination and enter an order requiring the person to abate the
4 pollution or refer the matter to the attorney general for legal
5 action, or both.

6 (6) ~~(5)~~—A person who is aggrieved by an order of abatement of
7 the department or by the reissuance, modification, suspension, or
8 revocation of an existing permit of the department executed
9 pursuant to this section may file a sworn petition with the
10 department setting forth the grounds and reasons for the complaint
11 and asking for a contested case hearing on the matter pursuant to
12 the administrative procedures act of 1969, 1969 PA 306, MCL 24.201
13 to 24.328. A petition filed more than 60 days after action on the
14 order or permit may be rejected by the department as being
15 untimely.

16 (7) ~~(6)~~—Beginning January 1, 2007, all oceangoing vessels
17 engaging in port operations in this state shall obtain a permit
18 from the department. The department shall issue a permit for an
19 oceangoing vessel only if the applicant can demonstrate that the
20 oceangoing vessel will not discharge aquatic nuisance species or if
21 the oceangoing vessel discharges ballast water or other waste or
22 waste effluent, that the operator of the vessel will utilize
23 environmentally sound technology and methods, as determined by the
24 department, that can be used to prevent the discharge of aquatic
25 nuisance species. The department shall cooperate to the fullest
26 extent practical with other Great Lakes basin states, the Canadian
27 Great Lakes provinces, the Great Lakes panel on aquatic nuisance

1 species, the Great Lakes fishery commission, the international
2 joint commission, and the Great Lakes commission to ensure
3 development of standards for the control of aquatic nuisance
4 species that are broadly protective of the waters of the state and
5 other natural resources. Permit fees for permits under this
6 subsection shall be assessed as provided in section 3120. The
7 permit fees for an individual permit issued under this subsection
8 shall be the fees specified in section 3120(1)(a) and (5)(a). The
9 permit fees for a general permit issued under this subsection shall
10 be the fees specified in section 3120(1)(c) and (5)(b)(i). Permits
11 under this subsection shall be issued in accordance with the
12 timelines provided in section 3120. The department may promulgate
13 rules to implement this subsection.

14 (8) AN ANIMAL FEEDING OPERATION SHALL OBTAIN A PERMIT UNDER
15 THIS PART IF ANY OF THE FOLLOWING CIRCUMSTANCES EXIST:

16 (A) THE ANIMAL FEEDING OPERATION IS 5 TIMES LARGER THAN THE
17 MINIMUM SIZE OF A LARGE CAFO.

18 (B) THE ANIMAL FEEDING OPERATION IS A LARGE CAFO THAT IS NOT
19 AN MAEAP-VERIFIED LARGE CAFO.

20 (C) THE ANIMAL FEEDING OPERATION HAS A DISCHARGE, THAT IS NOT
21 AN AGRICULTURAL STORM WATER DISCHARGE, OF POLLUTANTS INTO THE
22 WATERS OF THE STATE IN VIOLATION OF STATE WATER QUALITY STANDARDS.

23 (9) AS A CONDITION OF A PERMIT ISSUED UNDER SUBSECTION (8),
24 THE DEPARTMENT SHALL REQUIRE THAT THE PERMITTEE PREPARE AND
25 IMPLEMENT A SITE-SPECIFIC NUTRIENT MANAGEMENT PLAN AS DEFINED IN
26 SECTION 8201 TO ASSURE THAT WATER QUALITY STANDARDS ARE MET.

27 Sec. 3115. (1) The department may request the attorney general

1 to commence a civil action for appropriate relief, including a
2 permanent or temporary injunction, for a violation of this part or
3 a provision of a permit or order issued or rule promulgated under
4 this part. An action under this subsection may be brought in the
5 circuit court for the county of Ingham or for the county in which
6 the defendant is located, resides, or is doing business. If
7 requested by the defendant within 21 days after service of process,
8 the court shall grant a change of venue to the circuit court for
9 the county of Ingham or for the county in which the alleged
10 violation occurred, is occurring, or, in the event of a threat of
11 violation, will occur. The court has jurisdiction to restrain the
12 violation and to require compliance. In addition to any other
13 relief granted under this subsection, the court, except as
14 otherwise provided in this subsection, shall impose a civil fine of
15 not less than \$2,500.00 and the court may award reasonable attorney
16 fees and costs to the prevailing party. However, all of the
17 following apply:

18 (a) The maximum fine imposed by the court shall be not more
19 than \$25,000.00 per day of violation.

20 (b) For a failure to report a release to the department or to
21 the primary public safety answering point under section 3111b(1),
22 the court shall impose a civil fine of not more than \$2,500.00.

23 (c) For a failure to report a release to the local health
24 department under section 3111b(2), the court shall impose a civil
25 fine of not more than \$500.00.

26 (2) A person who at the time of the violation knew or should
27 have known that he or she discharged a substance contrary to this

1 part, or contrary to a permit or order issued or rule promulgated
2 under this part, or who intentionally makes a false statement,
3 representation, or certification in an application for or form
4 pertaining to a permit or in a notice or report required by the
5 terms and conditions of an issued permit, or who intentionally
6 renders inaccurate a monitoring device or record required to be
7 maintained by the department, is guilty of a felony and shall be
8 fined not less than \$2,500.00 or more than \$25,000.00 for each
9 violation. The court may impose an additional fine of not more than
10 \$25,000.00 for each day during which the unlawful discharge
11 occurred. If the conviction is for a violation committed after a
12 first conviction of the person under this subsection, the court
13 shall impose a fine of not less than \$25,000.00 per day and not
14 more than \$50,000.00 per day of violation. Upon conviction, in
15 addition to a fine, the court in its discretion may sentence the
16 defendant to imprisonment for not more than 2 years or impose
17 probation upon a person for a violation of this part. With the
18 exception of the issuance of criminal complaints, issuance of
19 warrants, and the holding of an arraignment, the circuit court for
20 the county in which the violation occurred has exclusive
21 jurisdiction. However, the person ~~shall~~**IS** not ~~be~~ subject to the
22 penalties of this subsection if the discharge of the effluent is in
23 conformance with and obedient to a rule, order, or permit of the
24 department. In addition to a fine, the attorney general may file a
25 civil suit in a court of competent jurisdiction to recover the full
26 value of the injuries done to the natural resources of the state
27 and the costs of surveillance and enforcement by the state

1 resulting from the violation.

2 (3) Upon a finding by the court that the actions of a civil
3 defendant pose or posed a substantial endangerment to the public
4 health, safety, or welfare, the court shall impose, in addition to
5 the sanctions set forth in subsection (1), a fine of not less than
6 \$500,000.00 and not more than \$5,000,000.00.

7 (4) Upon a finding by the court that the actions of a criminal
8 defendant pose or posed a substantial endangerment to the public
9 health, safety, or welfare, the court shall impose, in addition to
10 the penalties set forth in subsection (2), a fine of not less than
11 \$1,000,000.00 and, in addition to a fine, a sentence of 5 years'
12 imprisonment.

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

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

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

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

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

3 (a) Be payable to the state of Michigan and credited to the
4 general fund. **HOWEVER, IF THE VIOLATION OCCURRED AT AN ANIMAL**
5 **FEEDING OPERATION, THE FINE SHALL BE CREDITED TO THE AGRICULTURE**
6 **POLLUTION PREVENTION FUND CREATED IN SECTION 8206.**

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

9 (8) A lien under subsection (7)(b) ~~shall take effect and have~~
10 **TAKES EFFECT AND HAS** priority over all other liens and encumbrances
11 except those filed or recorded prior to the date of judgment, **BUT**
12 only if notice of the lien is filed or recorded as required by
13 state or federal law.

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

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

22 Sec. 5303. (1) Municipalities shall consider and utilize,
23 where possible, cooperative regional or intermunicipal projects in
24 satisfying sewerage needs in the development of project plans.

25 (2) A municipality may submit a project plan for use by the
26 department in developing a priority list.

27 (3) The project plan for a tier I project shall include

1 documentation that demonstrates that the project is needed to
2 assure maintenance of, or to progress toward, compliance with the
3 federal water pollution control act or part 31, and to meet the
4 minimum requirements of the national environmental policy act of
5 1969, ~~Public Law 91-190, 42 U.S.C. USC 4321 , 4331 to 4335, and~~
6 ~~4341 to 4347~~. The documentation shall demonstrate all of the
7 following:

8 (a) The need for the project.

9 (b) That feasible alternatives to the project were evaluated
10 taking into consideration volume reduction opportunities and the
11 demographic, topographic, hydrologic, and institutional
12 characteristics of the area.

13 (c) That the project is cost effective and implementable from
14 a legal, institutional, financial, and management standpoint.

15 (d) Other information as required by the department.

16 (4) The project plan for a tier II project shall include
17 documentation that demonstrates that the project is or was needed
18 to assure maintenance of or progress towards compliance with the
19 federal water pollution control act or part 31, and is consistent
20 with all applicable state environmental laws. The documentation
21 shall include all of the following information:

22 (a) Information to demonstrate the need for the project.

23 (b) A showing that the cost of the project is or was
24 justified, taking into account available alternatives. Those costs
25 determined by the department to be in excess of those costs
26 justified will not be eligible for assistance under this part.

27 (5) After notice and an opportunity for public comment, the

1 department shall annually develop separate priority lists for
2 sewage treatment works projects and stormwater treatment projects,
3 for nonpoint source projects, and for projects funded under the
4 strategic water quality initiatives fund created in section 5204.
5 Projects not funded during the time that a priority list developed
6 under this section is in effect shall be automatically prioritized
7 on the next annual list using the same criteria, unless the
8 municipality submits an amendment to its plan that introduces new
9 information to be used as the basis for prioritization. These
10 priority lists shall be based upon project plans submitted by
11 municipalities, and the following criteria:

12 (a) That a project complies with all applicable standards in
13 part 31 and the federal water pollution control act.

14 (b) An application for a segment of a project that received
15 funds under the title II construction grant program or title VI
16 state revolving loan funds of the federal water pollution control
17 act or the strategic water quality initiatives fund created in
18 section 5204 shall be first priority on its respective priority
19 list for funding for a period of not more than 3 years after funds
20 were first committed under those programs.

21 (c) If the project is a sewage treatment works project or a
22 stormwater treatment project, all of the following criteria:

23 (i) The severity of the water pollution problem to be
24 addressed, maximizing progress towards restoring beneficial uses
25 and meeting water quality standards.

26 (ii) A determination of whether a project is or was necessary
27 to comply with an order, permit, or other document with an

1 enforceable schedule for addressing a municipality's sewage-related
2 water pollution problems that was issued by the department or
3 entered as part of an action brought by the state against the
4 municipality or any component of the municipality. A municipality
5 may voluntarily agree to an order, permit, or other document with
6 an enforceable schedule as described in this subparagraph.

7 (iii) The population to be served by the project. However, the
8 criterion provided in this subparagraph shall not be applied to
9 projects funded by the strategic water quality initiatives fund
10 created in section 5204.

11 (iv) The dilution ratio existing between the discharge volume
12 and the receiving stream.

13 (d) If the project is a sewage treatment works project, 100
14 priority points shall be awarded pursuant to R 323.958 of the
15 Michigan administrative code for each of the following that apply
16 to the project:

17 (i) The project addresses on-site septic systems that are
18 adversely affecting the water quality of a water body or represent
19 a threat to public health, provided that soil and hydrologic
20 conditions are not suitable for the replacement of those on-site
21 septic systems.

22 (ii) The project includes the construction of facilities for
23 the acceptance or treatment of septage collected from on-site
24 septic systems.

25 (e) Rankings for nonpoint source projects shall be consistent
26 with the state nonpoint source management plan developed pursuant
27 to ~~section 319 of title III of the federal water pollution control~~

1 ~~act, chapter 758, 101 Stat. 52, 33 U.S.C. USC~~ 1329. **HOWEVER,**
2 **PRIORITY SHALL BE GIVEN TO PROJECTS THAT SUPPORT THE EFFORTS BEING**
3 **MADE BY MAEAP-VERIFIED FARMS AS DEFINED IN SECTION 8201.**

4 (f) Any other criteria established by the department by rule.

5 (6) The priority list shall be submitted annually to the chair
6 of the senate and house of representatives standing committees that
7 primarily consider legislation pertaining to the protection of
8 natural resources and the environment.

9 (7) For purposes of providing assistance, the priority list
10 shall take effect on the first day of each fiscal year.

11 (8) This section does not limit other actions undertaken to
12 enforce part 31, the federal water pollution control act, or any
13 other act.

14 (9) As used in this section, "on-site septic system" means
15 that term as defined in section 5201.

16 Sec. 8201. As used in this part:

17 (a) "Conservation easement" means that term as it is defined
18 in section 2140.

19 (b) "Conservation plan" means a plan approved by the
20 department for all or a portion of a parcel of land that specifies
21 the conservation practices to be undertaken and includes a schedule
22 for implementation.

23 (c) "Conservation practices" means practices, voluntarily
24 implemented by the landowner, that protect and conserve water
25 quality, soil, natural features, wildlife, or other natural
26 resources and that meet 1 or more of the following:

27 (i) The practices comply with United States natural resource

1 conservation service standards and specifications as approved by
2 the department.

3 (ii) The practices are provided in rules promulgated by the
4 department under this part.

5 (iii) The practices have been approved by the commission of
6 agriculture.

7 (D) "CONSERVATION PROGRAMS" MEANS THE CONSERVATION PROGRAMS
8 ESTABLISHED UNDER SECTION 8202(1) OR (2).

9 (E) ~~(d)~~—"Department" means the department of agriculture or
10 its authorized representatives.

11 (F) "FARM" MEANS THAT TERM AS DEFINED IN SECTION 2 OF THE
12 MICHIGAN RIGHT TO FARM ACT, 1981 PA 93, MCL 286.472.

13 (G) "FARM OPERATION" MEANS THAT TERM AS DEFINED IN SECTION 2
14 OF THE MICHIGAN RIGHT TO FARM ACT, 1981 PA 93, MCL 286.472.

15 (H) ~~(e)~~—"Fund" means the agriculture pollution prevention fund
16 created in section 8206.

17 (I) "MAEAP" MEANS THE MICHIGAN AGRICULTURE ENVIRONMENTAL
18 ASSURANCE PROGRAM ESTABLISHED UNDER SECTION 8202.

19 (J) "MAEAP-VERIFIED FARM" MEANS A FARM OR FARM OPERATION THAT
20 HAS BEEN VERIFIED UNDER SECTION 8203 AS BEING IN COMPLIANCE WITH
21 THE CONSERVATION PRACTICES REQUIRED UNDER MAEAP.

22 (K) "SITE-SPECIFIC NUTRIENT MANAGEMENT PLAN" MEANS A SITE
23 SPECIFIC CONSERVATION PLAN THAT MEETS ALL OF THE FOLLOWING
24 REQUIREMENTS:

25 (i) REPRESENTS A GROUPING OF CONSERVATION PRACTICES AND
26 MANAGEMENT ACTIVITIES THAT, WHEN IMPLEMENTED AS PART OF A
27 CONSERVATION SYSTEM, WILL HELP TO ENSURE THAT BOTH PRODUCTION AND

1 NATURAL RESOURCES PROTECTION GOALS ARE ACHIEVED.

2 (ii) ADDRESSES SOIL EROSION, MANURE, AND ORGANIC BY-PRODUCTS
3 AND THEIR POTENTIAL IMPACT ON WATER QUALITY.

4 (iii) IS DESIGNED TO ASSIST LIVESTOCK PRODUCERS IN MEETING ALL
5 APPLICABLE LOCAL, TRIBAL, STATE, AND FEDERAL WATER QUALITY GOALS
6 AND REGULATIONS.

7 (l) ~~(f)~~—"Verification" or "verify" means a determination by the
8 department that 1 or more conservation practices have been
9 established and are being maintained in accordance with a
10 conservation plan.

11 Sec. 8202. (1) The department may establish conservation
12 programs designed to encourage the ~~voluntary~~ use of conservation
13 practices in the state.

14 (2) THE DEPARTMENT SHALL IMPLEMENT A MICHIGAN AGRICULTURE
15 ENVIRONMENTAL ASSURANCE PROGRAM FOR FARMS AND FARM OPERATIONS THAT
16 MEETS ALL OF THE FOLLOWING REQUIREMENTS:

17 (A) WAS RECOMMENDED BY THE MICHIGAN AGRICULTURE POLLUTION
18 PREVENTION IMPLEMENTATION PLAN SIGNED BY THE DIRECTOR OF THE
19 DEPARTMENT AND THE DIRECTOR OF THE DEPARTMENT OF ENVIRONMENTAL
20 QUALITY IN 1998.

21 (B) CONSISTS OF EDUCATION, ON-FARM RISK ASSESSMENT, AND THIRD
22 PARTY VERIFICATION BY THE DEPARTMENT OF AGRICULTURE.

23 (C) FOCUSES ON LIVESTOCK, CROPPING, OR FARMSTEAD SYSTEMS.

24 (D) IS DESIGNED TO HELP FARMS AND FARM OPERATIONS VOLUNTARILY
25 PREVENT OR MINIMIZE AGRICULTURAL POLLUTION RISKS.

26 (E) FOR PRIMARILY LIVESTOCK OPERATIONS, REQUIRES COMPLIANCE
27 WITH A SITE-SPECIFIC NUTRIENT MANAGEMENT PLAN.

1 (3) ~~(2)~~—In implementing the conservation programs established
2 under this part, the department, in coordination with the
3 departments of natural resources and environmental quality, may do
4 1 or more of the following:

5 (a) Enter into contracts with 1 or more persons for the
6 implementation of conservation practices on his or her land.

7 (b) Enter into contracts or other agreements with 1 or more
8 persons to administer or promote conservation programs, or to
9 implement conservation practices.

10 (c) Provide payments, financial incentives, or, upon
11 verification of the implementation of conservation practices,
12 reimbursement for rental payments or for costs of conservation
13 practice implementation, or both.

14 (d) Promote the use of conservation practices.

15 (e) Recognize and provide awards for persons who have
16 implemented conservation practices.

17 (f) Monitor and verify compliance with conservation plans.

18 (g) Enforce contracts or other agreements entered into under
19 this part.

20 (h) Terminate contracts or other agreements entered into under
21 this part in accord with terms established in the contract or other
22 agreement.

23 (4) ~~(3)~~—In carrying out its responsibilities under this part,
24 the department shall coordinate with the departments of natural
25 resources and environmental quality and other applicable partners.

26 Sec. 8203. (1) As part of a conservation program established
27 under this part, **INCLUDING, BUT NOT LIMITED TO MAEAP,** the

1 department may provide for conservation practice verification.
2 Conservation practice verification may be ~~granted~~ **PROVIDED** to a
3 person if all of the following conditions are met:

4 (a) The person has submitted a conservation plan in compliance
5 with requirements of the department.

6 (b) The person has established and is maintaining all
7 conservation practices provided for in the conservation plan,
8 according to the plan schedule.

9 (c) The person has agreed to allow the department, after
10 giving prior notice to the landowner, to conduct inspections of the
11 applicable land and facilities.

12 (d) The department has conducted an on-site inspection of the
13 conservation practices and has determined that the person has
14 established and is maintaining all conservation practices provided
15 for in the conservation plan, according to the plan schedule. **FOR A
16 LARGE CAFO AS DEFINED IN SECTION 3101, THE ON-SITE INSPECTION SHALL
17 BE CONDUCTED ANNUALLY.**

18 **(E) FOR A LARGE CAFO AS DEFINED IN SECTION 3101, THE
19 DEPARTMENT HAS CONDUCTED AN ANNUAL ON-SITE INSPECTION OF THE FARM
20 OR FARM OPERATION AND HAS DETERMINED THAT THE FARM OR FARM
21 OPERATION COMPLIES WITH GENERALLY ACCEPTED AGRICULTURAL AND
22 MANAGEMENT PRACTICES UNDER THE RIGHT TO FARM ACT, 1981 PA 93, MCL
23 286.471 TO 286.474, RELATED TO SITING, ODOR, AND MANURE MANAGEMENT.**

24 (2) If the department determines at any time that the
25 conservation practices provided in a conservation plan have not
26 been established or are not being maintained, the department may
27 revoke a person's conservation practice verification.

1 (3) If a person's conservation practice verification is
2 revoked, the person may be subject to penalties and repayment of
3 all or a portion of the payments, financial incentives, land rental
4 payments, and reimbursement of costs paid for implementation of the
5 conservation practice according to the terms of the contract.

6 Sec. 8206. (1) The agriculture pollution prevention fund is
7 created in the state treasury.

8 (2) The state treasurer may receive money or other assets from
9 any source for deposit into the fund, including state and federal
10 revenues, gifts, bequests, and other donations. The state treasurer
11 shall direct the investment of the fund and shall credit to the
12 fund interest and earnings from fund investments.

13 (3) Money in the fund or in any account within the fund at the
14 close of the fiscal year shall remain in the fund or account and
15 shall not lapse to the general fund.

16 (4) ~~Money~~ **SUBJECT TO SUBSECTION (5), MONEY** in the fund shall
17 be expended, upon appropriation, only for 1 or more of the
18 following:

19 (a) For payments, financial incentives, or reimbursement for
20 rental payments for the implementation of conservation practices.

21 (b) For payments required under contracts entered into under
22 this part.

23 (c) For the purchase of conservation easements.

24 (d) For monitoring and enforcement of conservation easements.

25 (e) For awards to participants in conservation programs
26 established by the department under this part.

27 (f) For the promotion of conservation programs established by

1 the department under this part.

2 (g) Not more than 20% of the annual appropriations from the
3 fund for the administrative costs of the department in implementing
4 this part. As used in this subdivision, administrative costs
5 include, but are not limited to, costs incurred in doing 1 or more
6 of the following:

7 (i) Developing and implementing conservation programs.

8 (ii) Managing payments and financial incentives.

9 (iii) Monitoring and verifying the implementation of
10 conservation practices and enforcing contracts or agreements
11 concerning conservation practices.

12 (iv) Coordinating conservation programs with the United States
13 department of agriculture and other state agencies with
14 jurisdiction over conservation programs.

15 **(5) THE DEPARTMENT SHALL GIVE PRIORITY TO EXPENDITURES UNDER**
16 **SUBSECTION (4) TO PROJECTS AT MAEAP-VERIFIED FARMS.**

17 (6) ~~(5)~~—The department shall annually prepare and submit to
18 the standing committees of the senate and house of representatives
19 with jurisdiction over issues related to agriculture and the senate
20 and house of representatives appropriations committees a report
21 that includes all of the following:

22 (a) The amount of money received by the fund during the
23 previous fiscal year.

24 (b) The expenditures of money from the fund during the
25 previous fiscal year broken down by the categories listed in
26 subsection (4)(a) to (g).

27 (c) The balance of the fund on the date of the report.

1 (d) The number of acres in which conservation practices have
2 been implemented.

3 (e) The number of acres in which conservation easements have
4 been purchased or acquired.

5 **SEC. 8209. NOTWITHSTANDING ANY OTHER PROVISION OF THIS ACT OR**
6 **A RULE PROMULGATED UNDER THIS ACT OR PERMIT OR ORDER ISSUED UNDER**
7 **THIS ACT, IF A FARM OR FARM OPERATION IS VERIFIED UNDER SECTION**
8 **8203, THE FARM OR FARM OPERATION SHALL NOT BE CONSIDERED TO HAVE**
9 **CAUSED AN IMPAIRMENT OF THE NATURAL RESOURCES OF THE STATE UNLESS**
10 **THE DIRECTOR OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY DETERMINES**
11 **THAT WATER QUALITY DATA OR RESULTS FROM A WATER QUALITY STUDY**
12 **CONCLUSIVELY ESTABLISH THAT THE FARM OR FARM OPERATION CAUSED A**
13 **RECEIVING WATER BODY TO EXCEED WATER QUALITY STANDARDS UNDER PART**
14 **31.**

15 Sec. 8801. As used in this part:

16 (a) "Department" means the department of environmental
17 quality.

18 (b) "Director" means the director of the department.

19 (c) "Fund" means the clean water fund created in section 8807.

20 (d) "Grant" means a nonpoint source pollution prevention and
21 control grant or a wellhead protection grant under this part.

22 (e) "Local unit of government" means a county, city, village,
23 or township, or an agency of a county, city, village, or township;
24 the office of a county drain commissioner; a ~~soil~~-conservation
25 district established under part 93; a watershed council; a local
26 health department as defined in section 1105 of the public health
27 code, 1978 PA 368, MCL 333.1105; or an authority or any other

1 public body created by or pursuant to state law.

2 (F) "MAEAP-VERIFIED FARM" MEANS THAT TERM AS IT IS DEFINED IN
3 SECTION 8201.

4 (G) ~~(F)~~—"Nonpoint source pollution" means water pollution from
5 diffuse sources, including runoff from precipitation or snowmelt
6 contaminated through contact with pollutants in the soil or on
7 other surfaces and either infiltrating into the groundwater or
8 being discharged to surface waters, or runoff or wind causing
9 erosion of soil into surface waters.

10 Sec. 8802. (1) The department, in consultation with the
11 department of agriculture, shall establish a grants program to
12 provide grants for nonpoint source pollution prevention and control
13 projects and wellhead protection projects. The grants program shall
14 provide grants to local units of government or entities that are
15 exempt from taxation under section 501(c)(3) of the internal
16 revenue code.

17 (2) The nonpoint source pollution prevention and control
18 grants issued under this part shall be provided for projects that
19 do either or both of the following:

20 (a) Implement the physical improvement portion of watershed
21 plans that are approved by the department.

22 (b) Reduce specific nonpoint source pollution as identified by
23 the department.

24 (3) The wellhead protection grants issued under this part
25 shall be provided for projects that are consistent with a wellhead
26 protection plan approved by the department and that do any of the
27 following:

1 (a) Plug abandoned wells.

2 (b) Provide for the purchase of land or the purchase of rights
3 in land to protect aquifer recharge areas.

4 (c) Implement the physical improvement portion of the wellhead
5 protection plan.

6 (4) For any grant issued under this part, a local unit of
7 government shall contribute at least 25% of the project's total
8 cost from other public or private funding sources. The department
9 may approve in-kind services to meet all or a portion of the match
10 requirement under this subsection. In addition, the department may
11 accept as the match requirement under this subsection a contract
12 between the grant applicant and the department that provides for
13 maintenance of the project or practices that are funded under terms
14 acceptable to the department. The contract shall require
15 maintenance of the project or practices throughout the period of
16 time in which the state is paying off the bonds that were issued
17 pursuant to the clean Michigan initiative act, **1998 PA 284, MCL**
18 **324.95101 TO 324.95108**, to implement this part.

19 Sec. 8803. In selecting projects for a grant award, the
20 department shall consider the following as they relate to a
21 project:

22 (a) The expectation for long-term water quality improvement.

23 (b) The expectation for long-term protection of high quality
24 waters.

25 (c) The consistency of the project with remedial action plans
26 and other regional water quality or watershed management plans
27 approved by the department.

1 (d) The placement of the watershed on the list of impaired
2 waters pursuant to ~~section 303(d) of title III of the federal water~~
3 ~~pollution control act, chapter 758, 86 Stat. 846, 33 U.S.C. 33 USC~~
4 1313.

5 (e) Commitments for financial and technical assistance from
6 the partners in the project.

7 (f) Financial and other resource contributions, including in-
8 kind services, by project participants in excess of that required
9 in section 8802(4).

10 (g) The length of time the applicant has committed to maintain
11 the physical improvements.

12 (h) The commitment to provide monitoring to document
13 improvement in water quality or the reduction of pollutant loads.

14 (i) Whether the project provides benefits to sources of
15 drinking water.

16 **(J) WHETHER AN MAEAP-VERIFIED FARM IS LOCATED WITHIN THE**
17 **PROJECT AREA.**

18 **(K)** ~~(j)~~—Other information the department considers relevant.

19 Enacting section 1. This amendatory act does not take effect
20 unless Senate Bill No. 503

21 of the 94th Legislature is enacted into law.