

SENATE BILL NO. 447

August 20, 2019, Introduced by Senator HERTEL and referred to the Committee on Appropriations.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 3118 and 3120 (MCL 324.3118 and 324.3120), section 3118 as amended by 2017 PA 40 and section 3120 as amended by 2015 PA 82.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3118. (1) Except as otherwise provided in this section,
2 until October 1, ~~2019,~~**2023**, the department shall collect **the**

1 **following** stormwater discharge fees from persons ~~who~~**that** apply for
2 or have been issued stormwater discharge permits: ~~as follows:~~

3 (a) A 1-time fee of \$400.00 ~~is required~~ for a permit related
4 solely to a site of construction activity for each permitted site.
5 The fee shall be submitted ~~by the permit applicant with his or her~~
6 **with the** application for an individual permit or for a certificate
7 of coverage under a general permit. For a permit by rule, the fee
8 shall be submitted by the construction site permittee ~~along with~~
9 ~~his or her~~**with the** notice of coverage. A person needing more than
10 1 permit may submit a single payment for more than 1 permit and
11 receive appropriate credit. Payment of the fee under this
12 subdivision or verification of prepayment is a necessary part of a
13 valid permit application or notice of coverage under a permit by
14 rule.

15 (b) An annual fee of \$260.00 ~~is required~~ for a permit related
16 solely to a stormwater discharge associated with industrial
17 activity or from a commercial site for which the department
18 determines a permit is needed.

19 (c) ~~An~~**Except as provided in subdivision (d), (e), or (f), an**
20 annual fee of \$500.00 ~~is required~~ for a permit for a municipal
21 separate storm sewer system. ~~, unless the permit is issued to a~~
22 ~~city, a village, a township, or a county or is a single permit~~
23 ~~authorization for municipal separate storm sewer systems in~~
24 ~~multiple locations statewide.~~

25 (d) ~~An annual fee for~~**For** a permit for a municipal separate
26 storm sewer system issued to a city, village, or township, ~~shall be~~
27 **an annual fee** determined by its population in an urbanized area as
28 defined by the United States Bureau of the Census ~~. The fee shall~~
29 ~~be~~**and, except as provided in subsection (11),** based on the latest

1 available decennial census, as follows:

2 (i) For a population of 1,000 people or fewer, ~~the annual fee~~
3 ~~is~~ \$500.00.

4 (ii) For a population of more than 1,000 people, but fewer than
5 3,001 people, ~~the annual fee is~~ \$1,000.00.

6 (iii) For a population of more than 3,000 people, but fewer than
7 10,001 people, ~~the annual fee is~~ \$2,000.00.

8 (iv) For a population of more than 10,000 people, but fewer
9 than 30,001 people, ~~the annual fee is~~ \$3,000.00.

10 (v) For a population of more than 30,000 people, but fewer
11 than 50,001 people, ~~the annual fee is~~ \$4,000.00.

12 (vi) For a population of more than 50,000 people, but fewer
13 than 75,001 people, ~~the annual fee is~~ \$5,000.00.

14 (vii) For a population of more than 75,000 people, but fewer
15 than 100,001 people, ~~the annual fee is~~ \$6,000.00.

16 (viii) For a population of more than 100,000 people, ~~the annual~~
17 ~~fee is~~ \$7,000.00.

18 (e) An annual fee of \$3,000.00 ~~is required~~ for a permit for a
19 municipal separate storm sewer system issued to a county.

20 (f) ~~An annual fee for~~ **For** a single municipal separate storm
21 sewer systems permit authorizing a state or federal agency to
22 operate municipal separate storm sewer systems in multiple
23 locations statewide, ~~shall be an annual fee~~ determined ~~in~~
24 ~~accordance with~~ **pursuant to** a memorandum of understanding between
25 that state or federal agency and the department and ~~shall be based~~
26 on the projected ~~needs by~~ **costs of** the department to administer the
27 permit.

28 (2) A stormwater discharge permit is not required for a
29 municipality that does not own or operate a separate storm sewer

1 system. The department shall not collect stormwater discharge fees
2 under this section from a municipality that does not own or operate
3 a separate storm sewer system.

4 (3) Permit fees required under this section are nonrefundable.

5 (4) A person possessing a permit not related solely to a site
6 of construction activity as of January 1 shall be assessed a fee.
7 The department shall notify those persons of their fee assessments
8 by February 1. Payment shall be postmarked no later than March 15.
9 Failure by the department to send **a person** a fee assessment
10 notification by the deadline, or failure of a person to receive a
11 fee assessment notification, does not relieve that person of ~~his or~~
12 ~~her~~**the** obligation to pay the fee. If the department does not meet
13 the February deadline for sending the fee assessment, the fee
14 assessment is due not later than 45 days after the permittee
15 receives a fee notification.

16 (5) If a stormwater permit is issued for a drainage district,
17 the drainage district is responsible for the applicable fee under
18 this section.

19 (6) The department shall assess interest on all fee payments
20 submitted under this section after the due date. The permittee
21 shall pay an additional amount equal to 0.75% of the payment due
22 for each month or portion of a month the payment remains past due.

23 (7) The department shall forward all fees and interest
24 payments collected under this section to the state treasurer for
25 deposit into the fund.

26 (8) The department shall ~~make~~**require the** payment of the
27 ~~required~~ fee assessed under this section **as** a condition of issuance
28 or reissuance of a permit not related solely to a site of
29 construction activity.

1 (9) In addition to any other penalty provided in this part, if
 2 a person fails to pay the fee required under this section by its
 3 due date, the person is in violation of this part and the
 4 department may undertake enforcement actions as authorized under
 5 this part.

6 (10) The attorney general may bring an action to collect
 7 overdue fees and interest payments imposed under this section.

8 (11) If the permit is for a municipal separate storm sewer
 9 system and the population served by that system is different than
 10 that determined by the latest decennial census, the permittee may
 11 appeal the annual fee determination and submit written verification
 12 of actual population served by the municipal separate storm sewer
 13 system.

14 (12) A person who wishes to appeal either a fee or a penalty
 15 assessed under this section is limited to an administrative appeal
 16 ~~, in accordance with~~ **under** section 631 of the revised judicature
 17 act of 1961, 1961 PA 236, MCL 600.631. The appeal shall be filed
 18 within 30 days ~~of~~ **after** the department's fee notification under
 19 subsection (4).

20 (13) As used in this section and section 3119:

21 (a) "Certificate of coverage" means a document issued by the
 22 department that authorizes a discharge under a general permit.

23 (b) "Clean water act" means the federal water pollution
 24 control act, 33 USC 1251 to ~~1376-~~ **1388**.

25 (c) "Construction activity" means a human-made earth change or
 26 disturbance in the existing cover or topography of land that is 5
 27 acres or more in size, for which a national permit is required
 28 pursuant to 40 CFR 122.26(a), and which is described as a
 29 construction activity in 40 CFR 122.26(b)(14)(x). Construction

1 activity includes clearing, grading, and excavating activities.
2 Construction activity does not include the practice of clearing,
3 plowing, tilling soil, and harvesting for the purpose of crop
4 production.

5 (d) "Fee" means a stormwater discharge fee authorized under
6 this section.

7 (e) "Fund" means the stormwater fund created in section 3119.

8 (f) "General permit" means a permit issued authorizing a
9 category of similar discharges.

10 (g) "Individual permit" means a site-specific permit.

11 (h) "Municipal separate storm sewer system" means all separate
12 storm sewers that are owned or operated by the United States or a
13 state, city, village, township, county, district, association, or
14 other public body created by or pursuant to state law, having
15 jurisdiction over disposal of sewage, industrial wastes,
16 stormwater, or other wastes, including special districts under
17 state law, such as a sewer district, flood control district, or
18 drainage district or similar entity, or a designated or approved
19 management agency under section 208 of the clean water act, 33 USC
20 1288, that discharges to waters of the state. Municipal separate
21 storm sewer system includes systems similar to separate storm sewer
22 systems in municipalities, such as systems at military bases, large
23 hospital or prison complexes, and highways and other thoroughfares.
24 Municipal separate storm sewer system does not include separate
25 storm sewers in very discrete areas, such as individual buildings.

26 (i) "Notice of coverage" means a notice that a person engaging
27 in construction activity agrees to comply with a permit by rule for
28 that activity. A notice of coverage is not required to include a
29 copy of an individual permit issued under part 91 if the notice of

1 coverage includes a copy of a permit for the construction activity
2 issued under part 615, 625, 631, 632, or 634, along with any forms
3 or diagrams pertaining to soil erosion and sedimentation control
4 that were part of the application for that permit.

5 (j) "Permit", unless the context implies otherwise, or
6 "stormwater discharge permit" means a permit authorizing the
7 discharge of wastewater or any other substance to surface waters of
8 the state under the national pollutant discharge elimination
9 system, pursuant to the clean water act or this part and the ~~rules~~
10 ~~and regulations~~ **or rules** promulgated under that act or this part.

11 (k) "Public body" means the United States, this state, a city,
12 village, township, county, school district, public college or
13 university, or single purpose governmental agency, or any other
14 body that is created by federal or state ~~statute or law~~.

15 (l) "Separate storm sewer system" means a system of drainage,
16 including, but not limited to, roads, catch basins, curbs, gutters,
17 parking lots, ditches, conduits, pumping devices, or man-made
18 channels, that has the following characteristics:

19 (i) The system is not a combined sewer where stormwater mixes
20 with sanitary wastes.

21 (ii) The system is not part of a publicly owned treatment
22 works.

23 (m) ~~"Stormwater"~~ **"Stormwater"** means stormwater runoff,
24 snowmelt runoff, and surface runoff and drainage.

25 (n) "Stormwater discharge associated with industrial activity"
26 means a point source discharge of stormwater from a facility that
27 is ~~defined as an~~ **considered to be engaging in** industrial activity
28 under 40 CFR 122.26(b)(14)(i) to (ix) and (xi).

29 Sec. 3120. (1) Until October 1, ~~2019~~, **2023**, an application for

1 a new permit, a reissuance of a permit, or a modification of an
2 existing permit under this part authorizing a discharge into
3 surface water, other than a storm water discharge, shall be
4 accompanied by an application fee as follows:

5 (a) For an EPA major facility permit, \$750.00.

6 (b) For an EPA minor facility individual permit, a CSO permit,
7 or a wastewater stabilization lagoon individual permit, \$400.00.

8 (c) For an EPA minor facility general permit, \$75.00.

9 (2) Within 180 days after receipt of a complete application
10 for a new or increased use permit, the department shall either
11 grant or deny the permit, unless the applicant and the department
12 agree to extend this time period.

13 (3) By September 30 of the year following the submittal of a
14 complete application for reissuance of a permit, the department
15 shall either grant or deny the permit, unless the applicant and the
16 department agree to extend this time period.

17 (4) If the department fails to make a decision on an
18 application within the applicable time period under subsection (2)
19 or (3), **all of the following apply:**

20 (a) **The** department shall return to the applicant the
21 application fee submitted under subsection (1). ~~and the~~

22 (b) **The** applicant ~~shall-is~~ not ~~be~~ subject to an application
23 fee. ~~and~~

24 (c) **The applicant** shall receive a 15% annual discount on an
25 annual permit fee required for a permit issued based ~~upon-on~~ that
26 application.

27 (5) Until October 1, ~~2019,~~ **2023**, a person who receives a
28 permit under this part authorizing a discharge into surface water,
29 other than a stormwater discharge, is subject to an annual permit

1 fee as follows:

2 (a) For an industrial or commercial facility that is an EPA
3 major facility, \$8,700.00.

4 (b) For an industrial or commercial facility that is an EPA
5 minor facility, the following ~~amounts:~~**amount:**

6 (i) For a general permit for a low-flow facility, \$150.00.

7 (ii) For a general permit for a high-flow facility, \$400.00.

8 (iii) For an individual permit for a low-flow facility,
9 \$1,650.00.

10 (iv) For an individual permit for a high-flow facility,
11 \$3,650.00.

12 (c) For a municipal facility that is an EPA major facility,
13 the following ~~amounts:~~**amount:**

14 (i) For an individual permit for a facility discharging 500 MGD
15 or more, \$213,000.00.

16 (ii) For an individual permit for a facility discharging 50 MGD
17 or more but less than 500 MGD, \$20,000.00.

18 (iii) For an individual permit for a facility discharging 10 MGD
19 or more but less than 50 MGD, \$13,000.00.

20 (iv) For an individual permit for a facility discharging less
21 than 10 MGD, \$5,500.00.

22 (d) For a municipal facility that is an EPA minor facility,
23 the following ~~amounts:~~**amount:**

24 (i) For an individual permit for a facility discharging 10 MGD
25 or more, \$3,775.00.

26 (ii) For an individual permit for a facility discharging 1 MGD
27 or more but less than 10 MGD, \$3,000.00.

28 (iii) For an individual permit for a facility discharging less

1 than 1 MGD, \$1,950.00.

2 (iv) For a general permit for a high-flow facility, \$600.00.

3 (v) For a general permit for a low-flow facility, \$400.00.

4 (e) For a municipal facility that is a CSO facility,
5 \$6,000.00.

6 (f) For an individual permit for a wastewater stabilization
7 lagoon, \$1,525.00.

8 (g) For an individual or general permit for an agricultural
9 purpose, \$600.00, unless either of the following applies:

10 (i) The facility is an EPA minor facility and would qualify for
11 a general permit for a low-flow facility, in which case the fee is
12 \$150.00.

13 (ii) The facility is an EPA major facility that is not a
14 farmers' cooperative corporation, in which case the fee is
15 \$8,700.00.

16 (h) For a facility that holds a permit issued under this part
17 but has no discharge and is connected to and is authorized to
18 discharge only to a municipal wastewater treatment system, an
19 annual permit maintenance fee of \$100.00. However, if a facility
20 does have a discharge or at some ~~point-time~~ is no longer connected
21 to a municipal wastewater treatment system, the annual permit fee
22 shall be the appropriate fee as otherwise provided in this
23 subsection.

24 (6) If the person required to pay an application fee under
25 subsection (1) or an annual permit fee under subsection (5) is a
26 municipality, the municipality may pass on the application fee or
27 the annual permit fee, or both, to each user of the municipal
28 facility.

29 (7) The department shall send invoices for annual permit fees

1 under subsection (5) to all permit holders by December 1 of each
2 year. ~~The~~ **A** fee shall be based on the status of the facility as of
3 October 1 of that year. A person subject to an annual permit fee
4 shall pay the fee not later than January 15 of each year. Failure
5 by the department to send **a person** an invoice by ~~the deadline,~~
6 **December 1**, or failure of a person to receive an invoice, does not
7 relieve that person of ~~his or her~~ **the** obligation to pay the annual
8 permit fee. If the department does not ~~meet the~~ **send invoices by**
9 December 1, ~~deadline for sending invoices,~~ the annual permit fee is
10 due not later than 45 days after ~~receiving~~ **the permittee receives**
11 an invoice. The department shall forward annual permit fees
12 received under this section to the state treasurer for deposit into
13 the national pollutant discharge elimination system fund created in
14 section 3121.

15 (8) The department shall assess a penalty on all annual permit
16 fee payments submitted under this section after the due date. The
17 penalty ~~shall be an amount equal to~~ **is** 0.75% of the payment due for
18 each month or portion of a month the payment remains past due.

19 (9) Following payment of an annual permit fee, if a permittee
20 wishes to challenge its annual permit fee under this section, the
21 owner or operator shall submit the challenge in writing to the
22 department. The department shall not process the challenge unless
23 it is received by the department by March 1 of the year the payment
24 is due. A challenge shall identify the facility and state the
25 grounds upon which the challenge is based. Within 30 calendar days
26 after receipt of the challenge, the department shall determine the
27 validity of the challenge and provide the permittee with
28 notification of a revised annual permit fee and a refund, if
29 appropriate, or a statement setting forth the reason or reasons why

1 the annual permit fee was not revised. If the owner or operator of
2 a facility desires to further challenge its annual permit fee, the
3 owner or operator of the facility has an opportunity for a
4 contested case hearing as provided for under the administrative
5 procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

6 (10) The attorney general may bring an action for the
7 collection of the annual permit fee imposed under this section.

8 (11) As used in this section:

9 (a) "Agricultural purpose" means the agricultural production
10 or processing of those plants and animals useful to human beings
11 produced by agriculture and includes, but is not limited to,
12 forages and sod crops, grains and feed crops, field crops, dairy
13 animals and dairy products, poultry and poultry products, cervidae,
14 livestock, including breeding and grazing, equine, fish and other
15 aquacultural products, bees and bee products, berries, herbs,
16 fruits, vegetables, flowers, seeds, grasses, nursery stock, trees
17 and tree products, mushrooms, and other similar products, or any
18 other product, as determined by the commission of agriculture and
19 rural development, that incorporates the use of food, feed, fiber,
20 or fur. Agricultural purpose includes an operation or facility that
21 produces wine.

22 (b) "Combined sewer overflow" means a discharge from a
23 combined sewer system that occurs when the flow capacity of the
24 combined sewer system is exceeded at a point prior to the headworks
25 of a publicly owned treatment works during wet weather conditions.

26 (c) "Combined sewer system" means a sewer designed and used to
27 convey both storm water runoff and sanitary sewage, and that
28 contains lawfully installed regulators and control devices that
29 allow for delivery of sanitary flow to treatment during dry weather

1 periods and divert storm water and sanitary sewage to surface
2 waters during storm flow periods.

3 (d) "CSO facility" means a facility whose discharge is solely
4 a combined sewer overflow.

5 (e) "EPA major facility" means a **major** facility ~~that is~~
6 ~~designated by the United States Environmental Protection Agency as~~
7 ~~being a major facility under~~ **as defined in** 40 CFR 122.2.

8 (f) "EPA minor facility" means a facility that is not an EPA
9 major facility.

10 (g) "Farmers' cooperative corporation" means a farmers'
11 cooperative corporation organized within the limitations of section
12 98 of 1931 PA 327, MCL 450.98.

13 (h) "General permit" means a permit suitable for use at
14 facilities meeting eligibility criteria as specified in the permit.
15 With a general permit, the discharge from a specific facility is
16 acknowledged through a certificate of coverage issued to the
17 facility.

18 (i) "High-flow facility" means a facility that discharges 1
19 MGD or more.

20 (j) "Individual permit" means a permit developed for a
21 particular facility, taking into account that facility's specific
22 characteristics.

23 (k) "Industrial or commercial facility" means a facility that
24 is not a municipal facility.

25 (l) "Low-flow facility" means a facility that discharges less
26 than 1 MGD.

27 (m) "MGD" means 1,000,000 gallons per day.

28 (n) "Municipal facility" means a facility that is designed to
29 collect or treat sanitary wastewater, ~~and~~ is either publicly or

1 privately owned, and serves a residential area or a group of
2 municipalities.

3 (o) "Wastewater stabilization lagoon" means a ~~type of~~
4 treatment system constructed of ponds or basins designed to
5 receive, hold, and treat sanitary wastewater for a predetermined
6 amount of time through a combination of physical, biological, and
7 chemical processes.