

Act No. 253
Public Acts of 2014
Approved by the Governor
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**STATE OF MICHIGAN
97TH LEGISLATURE
REGULAR SESSION OF 2014**

Introduced by Senators Casperson, Robertson, Hansen, Green and Booher

ENROLLED SENATE BILL No. 444

AN ACT to amend 1994 PA 451, entitled "An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to protect the people's right to hunt and fish; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, assessments, and donations; to provide certain appropriations; to prescribe penalties and provide remedies; and to repeal acts and parts of acts," by amending sections 3301, 3305, 3306, 3307, 3309, 3311, 30103, and 30113 (MCL 324.3301, 324.3305, 324.3306, 324.3307, 324.3309, 324.3311, 324.30103, and 324.30113), sections 3301, 3305, 3307, 3309, and 3311 as added by 2004 PA 246, section 3306 as amended by 2011 PA 90, section 30103 as amended by 2013 PA 98, and section 30113 as amended by 2006 PA 496, and by adding section 3315.

The People of the State of Michigan enact:

Sec. 3301. As used in this part:

(a) "Aquatic invasive species" means an aquatic species that is nonnative to the ecosystem under consideration and whose introduction causes or is likely to cause economic or environmental harm or harm to human health.

(b) "Aquatic nuisance" means an organism that lives or propagates, or both, within the aquatic environment and that impairs the use or enjoyment of the waters of the state, including the intermediate aquatic hosts for schistosomes that cause swimmer's itch.

(c) "Certificate of coverage" means written authorization from the department to implement a project under a general permit.

(d) "Department" means the department of environmental quality.

(e) "Director" means the director of the department.

Sec. 3305. (1) A chemical shall not be used in waters of the state for aquatic nuisance control unless it is registered with the EPA, pursuant to section 3 of the federal insecticide, fungicide, and rodenticide act, 7 USC 136a, and the department of agriculture and rural development, pursuant to part 83, for the aquatic nuisance control activity for which it is used. The department shall not deny a permit or certificate of coverage because of the specific chemical proposed to be used, if the chemical is so registered, unless the department has worked with the applicant to identify an appropriate alternative chemical that satisfies the department's concern and no such chemical is available.

(2) The department may conduct evaluations of the impacts and effectiveness of any chemicals that are proposed for use for aquatic nuisance control in waters of the state. This may include the issuance of permits for field assessments of the chemicals.

(3) The director, in consultation with the director of the department of agriculture and rural development, may issue an order to prohibit or suspend the use of a chemical for aquatic nuisance control if, based on substantial scientific

evidence, use of the chemical causes unacceptable negative impacts to human health or the environment. The department shall not issue permits authorizing the use of such chemicals. In addition, a person shall cease the use of such chemicals upon notification by the department.

Sec. 3306. (1) Until October 1, 2014, an application for a certificate of coverage under this part shall be accompanied by a fee of \$75.00. Subject to subsection (2), an application for an individual permit under this part shall be accompanied by the following fee, based on the size of the area of impact:

- (a) Less than 1/2 acre, \$75.00.
- (b) 1/2 acre or more but less than 5 acres, \$200.00.
- (c) 5 acres or more but less than 20 acres, \$400.00.
- (d) 20 acres or more but less than 100 acres, \$800.00.
- (e) 100 acres or more, \$1,500.00.

(2) For the 2014-2015 state fiscal year and each subsequent fiscal year, the department shall proportionately adjust the certificate of coverage and permit application fees under subsection (1) by category to achieve a target in fee revenue under subsection (1) and shall post the adjusted fees on its website by November 1. The department shall set the target so that the annual cumulative total of the target amount plus all of the following equals, as nearly as possible, \$900,000.00:

- (a) The total amount of annual fees to be collected under section 3309 in the state fiscal year.
- (b) The amount of general funds appropriated to the program under this part.
- (c) The amount in the aquatic nuisance control fund created under subsection (4) in excess of \$100,000.00 carried forward from the prior state fiscal year.

(3) Notwithstanding any other provision of this section, fees as adjusted under subsection (2) shall be proportional to and shall not exceed the amounts set forth in subsection (1). For each state fiscal year beginning with the 2015-2016 state fiscal year, the state treasurer shall adjust the \$900,000.00 figure in subsection (2) by an amount determined by the state treasurer at the end of the preceding fiscal year to reflect the cumulative annual percentage change in the consumer price index. As used in this subsection, "consumer price index" means the most comprehensive index of consumer prices available for this state from the bureau of labor statistics of the United States department of labor.

(4) The aquatic nuisance control fund is created in the state treasury. The department shall forward all fees collected under this section, section 3309, and section 3311 to the state treasurer for deposit into the fund. The state treasurer may receive money or other assets from any other source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments. Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund. The department shall be the administrator of the fund for auditing purposes. The department shall expend money from the fund, upon appropriation, only for the administration of this part, including, but not limited to, the following:

- (a) Issuance of certificates of coverage and permits.
- (b) Technology and reasonable laboratory costs to operate the program under this part.
- (c) Compliance and enforcement activities related to aquatic nuisance control.

(d) Education of aquatic herbicide applicators, local and state government agencies, lake boards, lakefront property owners, and the general public about aquatic nuisance control and the requirements of this part. The director may contract with a nonprofit educational organization to administer an educational program as described in this subdivision.

(5) A fee under this section, section 3309, or section 3311 may be paid by credit or debit card or electronic fund transfer. The department shall determine which major credit and debit cards may be used to pay a fee. If a fee is paid by credit or debit card, the department may collect a service assessment from the user of the credit or debit card. The service assessment shall not exceed the actual cost to the department of the credit or debit card transaction.

(6) The department shall not charge a fee for an amendment to an application for a certificate of coverage or permit, including an amendment to an application after that application has been resubmitted under section 3307(7).

Sec. 3307. (1) An application for a certificate of coverage or permit may be submitted electronically.

(2) The department shall either approve or deny an application for a certificate of coverage by the latest of the following dates:

- (a) April 15.
- (b) 15 working days after receipt of a complete application.
- (c) Any date requested by the applicant for the certificate of coverage and agreed to by the department.

(3) If the department denies an application for a certificate of coverage, the department shall notify the applicant, in writing, of the reasons for the denial.

(4) The department shall approve an application for a permit in whole or part and issue the permit, or shall deny the application, by the latest of the following dates:

(a) April 15.

(b) 30 working days after receipt of a complete application except that this approval time is reduced to 15 working days after receipt of a complete application if the waterbody is listed on the registry under section 3315 as being infested with the particular aquatic invasive species that the applicant proposes to control under the permit.

(c) Any date requested by the permit applicant and agreed to by the department.

(5) The department shall not delay processing an application for a permit or certificate of coverage because the department has not completed processing of the fee payment accompanying the application. This subsection does not apply to an applicant if a previous fee payment offered by the applicant under section 3306 or section 3309 failed because of nonsufficient funds.

(6) If the department approves the application for a permit in part or denies the application, the department shall, by the deadline for approval or denial of the application, notify the applicant, in writing, of the reasons for the partial approval or denial.

(7) The department shall not deny an application for a certificate of coverage or a permit because it was submitted after a certain date in the year in which treatment is proposed. If the department approves an application in part or denies an application, the applicant may resubmit the application with changes to address the reasons for partial approval or denial. The resubmitted application is not subject to an additional fee.

(8) If the department fails to satisfy the requirements of subsections (2) to (7) with respect to an application for a certificate of coverage or a permit, all of the following apply:

(a) The department shall pay the applicant an amount equal to 15% of the application fee specified under section 3306 for that certificate of coverage or permit.

(b) The application shall be considered to be approved and the department shall be considered to have made any determination required for approval if all of the following apply:

(i) The proposed area of impact is the same as or entirely contained within the area of impact approved in a previous permit.

(ii) The active ingredient or trade name of each chemical proposed to be applied is the same as approved in a previous permit and each chemical is currently approved for use by the department.

(iii) The application rate and number of treatments do not exceed those approved in the previous permit.

(iv) The minimum length of time between treatments is not less than that approved in the previous permit.

Sec. 3309. (1) The term of a certificate of coverage shall not be less than 3 years unless the applicant requests a shorter term.

(2) A permit under this part shall, at a minimum, include all of the following information:

(a) The active ingredient or the trade name of each chemical to be applied.

(b) The application rate of each chemical.

(c) The maximum amount of each chemical to be applied per treatment.

(d) Minimum length of time between treatments for each chemical.

(e) A map or maps that clearly delineate the approved area of impact.

(f) The term of the permit. The term shall not be less than 3 years unless the applicant requests a shorter term.

(3) A permit under this part shall authorize chemical treatment in each year covered by the permit. This subsection does not apply to a chemical if the chemical's annual use is restricted in rules that were in effect on the effective date of the amendatory act that added this subsection.

(4) By April 1 of the second and each subsequent year of a permit, the permittee shall pay the department an annual fee. The annual fee shall equal the permit application fee paid for that specific permit under section 3306 including, for annual fees due after the initial treatment of an expanded area of impact under section 3311(3), the additional fee under section 3311(3)(e). If an annual fee is not received by the department by April 1, the permit is suspended until the annual fee is paid. When the application fee for a permit is paid, an applicant may choose to also pay in advance all the annual fees that will become due under this subsection if the permit is granted for the term requested by the applicant. If the application is denied or is granted for a shorter period than the applicant requested, the department shall refund the overpayment of annual fees.

(5) The department may impose additional conditions on a permit under this part to protect the natural resources or the public health, to prevent economic loss or impairment of recreational uses, to protect nontarget organisms, or to help ensure control of the aquatic nuisance.

Sec. 3311. (1) The department may make revisions to a permit under this part, to minimize the impacts to the natural resources, public health, and safety or to improve aquatic nuisance control, if the proposed revisions do not change the scope of the project and the permittee requests the revisions in writing. The department shall not charge a fee for a request for revisions to a permit. The department shall approve a request for revisions to a permit in whole or in part or deny the request within 3 business days after the request is received. The request shall include all of the following information:

- (a) The proposed changes to the permit.
- (b) An explanation of the necessity for the proposed changes.
- (c) Maps that clearly delineate any proposed changes to the area of impact.
- (d) Additional information that would help the department reach a decision on a permit amendment.

(2) If the permittee has written authorization to act on behalf of a person described in section 3303(4)(a), (b), or (c), upon written request of that person, the department shall transfer the permit to a new permittee with written authorization to act on behalf of that person. The department shall notify the original permittee of the transfer of the permit.

(3) Subject to subsection (4), a permittee may, without a revision to the permit or certificate of coverage, expand the area of impact beyond that authorized in the permit or certificate of coverage to include adjacent areas of the same waterbody that become infested after the application for the permit or certificate of coverage was submitted to the department. The permittee may increase the amount of chemicals used, as authorized in the permit or certificate of coverage, by an amount proportionate to the expansion in the area of impact. Before the initial treatment of the expanded area, the permittee shall notify the department. The permittee shall, within 15 business days after the initial treatment of the expanded area of impact, provide the department with all of the following:

- (a) A written explanation of the necessity for the expansion of the area of impact.
- (b) A map that clearly delineates the changes to the area of impact.

(c) A written statement specifying the increase in the amount of chemicals used or to be used as a result of the expansion of the area of impact.

- (d) The treatment dates for the expanded area of impact.

(e) If the permit application fee under section 3306 would have been higher if the expanded area of impact had been included in the permit application, a fee equal to the difference between the application fee paid and the application fee that would have been due.

(4) If the area of impact authorized in a permit or certificate of coverage is greater than 100 acres, a permittee shall not expand the area of impact under subsection (3) by more than 50% unless both of the following apply:

(a) The permittee has notified the department in advance of the proposal to expand the area of impact. The notification shall include the information described in subsection (3)(a) and (b).

(b) The department has not, within 2 business days after receiving notification under subdivision (a), notified the permittee of specific concerns about the proposal and that the proposal requires a revision of the permit or certificate of coverage.

Sec. 3315. The department shall post, by January 1, 2016, and maintain on its website a registry of waterbodies infested by aquatic invasive species and the particular aquatic invasive species infesting each waterbody. The registry shall be based on information from all of the following:

- (a) Permits and certificates of coverage issued under this part.

- (b) Reports received by the department from any of the following:

- (i) Certified applicators or registered applicators under part 83.

- (ii) Representatives of public or private institutions of higher education.

- (iii) Representatives of any other state, local, or federal agency with responsibility for the environment or natural resources.

Sec. 30103. (1) A permit is not required under this part for any of the following:

(a) Any fill or structure existing before April 1, 1966, in waters covered by former 1965 PA 291, and any fill or structures existing before January 9, 1973, in waters covered for the first time by former 1972 PA 346.

(b) A seasonal structure placed on bottomland to facilitate private noncommercial recreational use of the water if it does not unreasonably interfere with the use of the water by others entitled to use the water or interfere with water flow.

(c) Reasonable sanding of beaches to the existing water's edge by the riparian owner or a person authorized by the riparian owner.

(d) Maintenance of an agricultural drain, regardless of outlet, if all of the following requirements are met:

(i) The maintenance includes only activities that maintain the location, depth, and bottom width of the drain as constructed or modified at any time before July 1, 2014.

(ii) The maintenance is performed by the landowner or pursuant to the drain code of 1956, 1956 PA 40, MCL 280.1 to 280.630.

(e) A waste collection or treatment facility that is ordered to be constructed or is approved for construction under state or federal water pollution control law, if constructed in upland.

(f) Construction and maintenance of minor drainage structures and facilities which are identified by rule promulgated by the department pursuant to section 30110. Before such a rule is promulgated, the rule shall be approved by the majority of a committee consisting of the director of the department, the director of the department of agriculture and rural development, and the director of the state transportation department or their designated representatives. The rules shall be reviewed at least annually.

(g) Maintenance of a drain that either was legally established and constructed before January 1, 1973, pursuant to the drain code of 1956, 1956 PA 40, MCL 280.1 to 280.630, except those legally established drains constituting mainstream portions of certain natural watercourses identified in rules promulgated by the department under section 30110, or was constructed or modified under a permit issued pursuant to this part. As used in this subdivision, "maintenance of a drain" means the physical preservation of the location, depth, and bottom width of a drain and appurtenant structures to restore the function and approximate capacity of the drain as constructed or modified at any time before July 1, 2014, and includes, but is not limited to, the following activities if performed with best management practices:

(i) Excavation of accumulated sediments back to original contours.

(ii) Reshaping of the side slopes.

(iii) Bank stabilization where reasonably necessary to prevent erosion. Materials used for stabilization must be compatible with existing bank or bed materials.

(iv) Armoring, lining, or piping if a previously armored, lined, or piped section is being repaired and all work occurs within the footprint of the previous work.

(v) Replacement of existing control structures, if the original function of the drain is not changed and the original approximate capacity of the drain is not increased.

(vi) Repair of stabilization structures.

(vii) Culvert replacement, including culvert extensions of not more than 24 additional feet per culvert.

(viii) Emergency reconstruction of recently damaged parts of the drain. Emergency reconstruction must occur within a reasonable period of time after damage occurs in order to qualify for this exemption.

(h) Projects constructed under the watershed protection and flood prevention act, chapter 656, 68 Stat. 666, 16 USC 1001 to 1008, 1010, and 1011.

(i) Construction and maintenance of privately owned cooling or storage ponds used in connection with a public utility except at the interface with public waters.

(j) Maintenance of a structure constructed under a permit issued pursuant to this part and identified by rule promulgated under section 30110, if the maintenance is in place and in kind with no design or materials modification.

(k) A water withdrawal.

(l) Annual installation of a seasonal dock or docks, pilings, mooring buoys, or other mooring structures previously authorized by and in accordance with a permit issued under this part.

(m) Controlled access of livestock to streams for watering or crossing if constructed in accordance with applicable practice standards set by the United States department of agriculture, natural resources conservation service.

(n) Temporary drawdowns of impoundments at hydroelectric projects licensed by the federal energy regulatory commission (FERC) and subject to FERC's authority if both of the following apply:

(i) The FERC licensee has consulted this state during the drawdown plan development and this state's concerns have been addressed in the drawdown plan as FERC considers appropriate.

(ii) Adverse environmental impacts, including stream flow, aquatic resources, and timing, have been avoided and minimized to the extent practical.

(o) Removal, by the riparian owner or a person authorized by the riparian owner, of plants that are an aquatic nuisance as defined in section 3301, if the removal is accomplished by hand-pulling without using a powered or mechanized tool and all plant fragments are removed from the water and properly disposed of on land above the ordinary high-water mark as defined in section 30101.

(p) Raking of lake bottomlands by the riparian owner or a person authorized by the riparian owner. To minimize effects on the lake bottomlands, the areas raked shall be unvegetated before raking and predominantly composed of sand or pebbles, and the raking shall be performed without using a powered or mechanized tool. For the purposes of

this subdivision, the pulling of a nonpowered, nonmechanized tool with a boat is not the use of a powered or mechanized tool.

(2) As used in this section, "water withdrawal" means the removal of water from its source for any purpose.

(3) As used in this part, "agricultural drain" means a human-made conveyance of water that meets all of the following requirements:

(a) Does not have continuous flow.

(b) Flows primarily as a result of precipitation-induced surface runoff or groundwater drained through subsurface drainage systems.

(c) Serves agricultural production.

(d) Was constructed before January 1, 1973, or was constructed in compliance with this part or former 1979 PA 203.

Sec. 30113. (1) The land and water management permit fee fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments. The state treasurer shall annually present to the department an accounting of the amount of money in the fund. The department shall be the administrator of the fund for auditing purposes.

(3) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(4) The department shall expend money from the fund, upon appropriation, only to implement this part and the following:

(a) Sections 3104, 3107, and 3108.

(b) Part 303.

(c) Part 315.

(d) Part 323.

(e) Part 325.

(f) Part 339.

(g) Part 353.

(h) Section 117 of the land division act, 1967 PA 288, MCL 560.117.

(5) The department shall annually report to the legislature how money in the fund was expended during the previous fiscal year.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Jay E. Randall

Clerk of the House of Representatives

Approved

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Governor