

HOUSE BILL No. 4619

May 1, 2003, Introduced by Rep. Brown and referred to the Committee on Appropriations.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 2505 and 3115 (MCL 324.2505 and 324.3115),
section 2505 as added by 1995 PA 60, and by adding sections 3120,
3121, and 3122.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2505. (1) The environmental education fund is created
2 within the state treasury.

3 (2) The state treasurer shall direct the investment of the
4 fund. The state treasurer may receive money or other assets from
5 any source for deposit into the fund. Interest and earnings from
6 fund investments shall be credited to the fund.

7 (3) Twenty-five percent of the civil fines collected annually
8 under the following parts or their predecessor acts, but not more
9 than \$150,000.00 in any fiscal year, shall be appropriated to the

1 fund:

2 ~~(a) Part 31.~~

3 **(a)** ~~(b)~~ Part 111.

4 **(b)** ~~(c)~~ Part 115.

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

7 (5) Money in the fund shall be used to implement this part
8 and may be used for the establishment and operation of a
9 clearinghouse of environmental education materials, which would
10 make environmental education materials available to educators
11 throughout the state.

12 Sec. 3115. (1) The department may request the attorney
13 general to commence a civil action for appropriate relief,
14 including a permanent or temporary injunction, for a violation of
15 this part or a provision of a permit, order, rule, or stipulation
16 of the department. An action under this subsection may be
17 brought in the circuit court for the county of Ingham or for the
18 county in which the defendant is located, resides, or is doing
19 business. The court has jurisdiction to restrain the violation
20 and to require compliance. In addition to any other relief
21 granted under this subsection, the court shall impose a civil
22 fine of not less than \$2,500.00 and may award reasonable attorney
23 fees and costs to the prevailing party. However, the maximum
24 fine imposed by the court shall be not more than \$25,000.00 per
25 day of violation.

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, order, rule, or stipulation of the
2 department, 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
10 than \$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
20 for the county in which the violation occurred has exclusive
21 jurisdiction. However, the person shall not be subject to the
22 penalties of this subsection if the discharge of the effluent is
23 in conformance with and obedient to a rule, order, or permit of
24 the department. In addition to a fine, the attorney general may
25 file a civil suit in a court of competent jurisdiction to recover
26 the full value of the injuries done to the natural resources of
27 the state and the costs of surveillance and enforcement by the

1 state 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
5 to the penalties set forth in subsection (1), a fine of not less
6 than \$500,000.00 and not more than \$5,000,000.00.

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

13 (5) To find a defendant civilly or criminally liable for
14 substantial endangerment under subsections (3) and (4), the court
15 shall determine that the defendant knowingly or recklessly acted
16 in 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
27 from the relevant information.

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

3 (a) Be payable to the state of Michigan and credited to the
4 ~~general fund~~ **groundwater discharge permit fund created in**
5 **section 3122.**

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

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

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

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

20 **Sec. 3120. (1) The department may levy and collect an**
21 **annual groundwater discharge permit fee from facilities that**
22 **discharge wastewater to the ground or groundwater of this state**
23 **pursuant to section 3112. The department shall set the fee so**
24 **that the annual total of fees assessed is equal to the amount**
25 **appropriated for the groundwater discharge permit program in**
26 **state fiscal year 2004. The department shall set the fee in the**
27 **2005 state fiscal year and each subsequent state fiscal year so**

1 that the annual total of fees assessed is equal to the amount
2 appropriated in state fiscal year 2004 with an annual adjustment
3 for inflation using the Detroit consumer price index. However,
4 75% of the balance in the groundwater discharge permit fund
5 created in section 3122 at the close of each state fiscal year
6 shall be used to offset the annual total of fees assessed in the
7 subsequent state fiscal year.

8 (2) The fee for each facility shall be calculated by
9 multiplying the groundwater discharge point fee by the complexity
10 factor and multiplying that product by the flow factor.

11 (3) The groundwater discharge point fee shall be calculated
12 by dividing the groundwater discharge permit fee appropriation
13 described in subsection (1) by the sum of the fee points for all
14 facilities with groundwater discharge permits. Individual fee
15 points shall be calculated by multiplying the complexity factor
16 and the flow factor.

17 (4) As used in this section:

18 (a) "Complexity factor" means the following applicable
19 multiplier based upon the rule that describes the discharge:

- 20 (i) R 323.2218 of the Michigan
21 administrative code..... 10
- 22 (ii) R 232.2210(y), 323.2215, and 323.2216
23 of the Michigan administrative code..... 5
- 24 (iii) R 323.2211 and 323.2213 of the
25 Michigan administrative code..... 3

26 (b) "Flow factor" means the following applicable multiplier
27 related to both the rule authorization and the total annual

1 discharge volume expressed in millions of gallons discharged:

2 (i) R 323.2218 of the Michigan administrative code:

3 (A) Fifty or more..... 12

4 (B) Ten to 49.999..... 8

5 (C) One to 9.999..... 6

6 (D) Less than 1..... 4

7 (ii) R 323.2110(y), 323.2215, and 323.2216 of the Michigan

8 administrative code:

9 (A) Fifty or more..... 6

10 (B) Ten to 49.999..... 5

11 (C) One to 9.999..... 4

12 (iii) R 323.2211 and 323.2213 of the

13 Michigan administrative code, all flows.... 2

14 Sec. 3121. (1) The department shall send invoices for the
 15 groundwater discharge permit fees under section 3120 to all
 16 permit holders by January 15 of each year. Fees will be charged
 17 for all facilities authorized as of December 15 of each calendar
 18 year. Payment shall be postmarked no later than March 1 of each
 19 year. The department shall forward money collected pursuant to
 20 this section to the state treasurer for deposit into the
 21 groundwater discharge permit fund established under section
 22 3122.

23 (2) The department shall assess a penalty on all fee payments
 24 submitted under this section after the due date. The penalty
 25 shall be an amount equal to 0.75% of the payment due for each
 26 month or portion of a month the payment remains past due.
 27 Failure to timely pay a fee imposed by this section is a

1 violation of this part and is cause for revocation of a permit
2 issued under this part and may subject the discharger to
3 additional penalties pursuant to section 3115. All penalties
4 collected shall be forwarded by the department to the state
5 treasurer for deposit in the groundwater discharge permit fund
6 created in section 3122.

7 (3) The attorney general may bring an action for the
8 collection of the groundwater discharge permit fees imposed under
9 this section.

10 Sec. 3122. (1) The groundwater discharge permit fund is
11 created within the state treasury. The state treasurer may
12 receive money or other assets from any source for deposit into
13 the fund. The state treasurer shall direct the investment of the
14 fund.

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

17 (3) The state treasurer shall credit to the fund the interest
18 and earnings from fund investments.

19 (4) The department shall expend money in the groundwater
20 discharge permit fund, upon appropriation, only to implement this
21 part and the rules promulgated under this part.