

Act No. 84  
Public Acts of 2019  
Approved by the Governor  
September 30, 2019

Filed with the Secretary of State  
September 30, 2019

EFFECTIVE DATE: September 30, 2019

**STATE OF MICHIGAN  
100TH LEGISLATURE  
REGULAR SESSION OF 2019**

Introduced by Senator Hertel

# ENROLLED SENATE BILL No. 447

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 3118, 3120, 30104, 30109, 32312, and 32513 (MCL 324.3118, 324.3120, 324.30104, 324.30109, 324.32312, and 324.32513), section 3118 as amended by 2017 PA 40, section 3120 as amended by 2015 PA 82, and sections 30104, 30109, 32312, and 32513 as amended by 2015 PA 76.

*The People of the State of Michigan enact:*

Sec. 3118. (1) Except as otherwise provided in this section, until October 1, 2023, the department shall collect the following stormwater discharge fees from persons that apply for or have been issued stormwater discharge permits:

(a) A 1-time fee of \$400.00 for a permit related solely to a site of construction activity for each permitted site. The fee shall be submitted with the application for an individual permit or for a certificate of coverage under a general permit. For a permit by rule, the fee shall be submitted by the construction site permittee with the notice of coverage. A person needing more than 1 permit may submit a single payment for more than 1 permit and receive appropriate credit. Payment of the fee under this subdivision or verification of prepayment is a necessary part of a valid permit application or notice of coverage under a permit by rule.

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

(c) Except as provided in subdivision (d), (e), or (f), an annual fee of \$500.00 for a permit for a municipal separate storm sewer system.

(d) For a permit for a municipal separate storm sewer system issued to a city, village, or township, an annual fee determined by its population in an urbanized area as defined by the United States Bureau of the Census and, except as provided in subsection (11), based on the latest available decennial census, as follows:

- (i) For a population of 1,000 people or fewer, \$500.00.
- (ii) For a population of more than 1,000 people, but fewer than 3,001 people, \$1,000.00.
- (iii) For a population of more than 3,000 people, but fewer than 10,001 people, \$2,000.00.
- (iv) For a population of more than 10,000 people, but fewer than 30,001 people, \$3,000.00.

- (v) For a population of more than 30,000 people, but fewer than 50,001 people, \$4,000.00.
- (vi) For a population of more than 50,000 people, but fewer than 75,001 people, \$5,000.00.
- (vii) For a population of more than 75,000 people, but fewer than 100,001 people, \$6,000.00.
- (viii) For a population of more than 100,000 people, \$7,000.00.
- (e) An annual fee of \$3,000.00 for a permit for a municipal separate storm sewer system issued to a county.
- (f) For a single municipal separate storm sewer systems permit authorizing a state or federal agency to operate municipal separate storm sewer systems in multiple locations statewide, an annual fee determined pursuant to a memorandum of understanding between that state or federal agency and the department and based on the projected costs of the department to administer the permit.
- (2) A stormwater discharge permit is not required for a municipality that does not own or operate a separate storm sewer system. The department shall not collect stormwater discharge fees under this section from a municipality that does not own or operate a separate storm sewer system.
- (3) Permit fees required under this section are nonrefundable.
- (4) A person possessing a permit not related solely to a site of construction activity as of January 1 shall be assessed a fee. The department shall notify those persons of their fee assessments by February 1. Payment shall be postmarked no later than March 15. Failure by the department to send a person a fee assessment notification by the deadline, or failure of a person to receive a fee assessment notification, does not relieve that person of the obligation to pay the fee. If the department does not meet the February deadline for sending the fee assessment, the fee assessment is due not later than 45 days after the permittee receives a fee notification.
- (5) If a stormwater permit is issued for a drainage district, the drainage district is responsible for the applicable fee under this section.
- (6) The department shall assess interest on all fee payments submitted under this section after the due date. The permittee shall pay an additional amount equal to 0.75% of the payment due for each month or portion of a month the payment remains past due.
- (7) The department shall forward fees and interest payments collected under this section to the state treasurer for deposit into the fund.
- (8) The department shall require the payment of the fee assessed under this section as a condition of issuance or reissuance of a permit not related solely to a site of construction activity.
- (9) In addition to any other penalty provided in this part, if a person fails to pay the fee required under this section by its due date, the person is in violation of this part and the department may undertake enforcement actions as authorized under this part.
- (10) The attorney general may bring an action to collect overdue fees and interest payments imposed under this section.
- (11) If the permit is for a municipal separate storm sewer system and the population served by that system is different than that determined by the latest decennial census, the permittee may appeal the annual fee determination and submit written verification of actual population served by the municipal separate storm sewer system.
- (12) A person who wishes to appeal either a fee or a penalty assessed under this section is limited to an administrative appeal under section 631 of the revised judicature act of 1961, 1961 PA 236, MCL 600.631. The appeal shall be filed within 30 days after the department's fee notification under subsection (4).
- (13) As used in this section and section 3119:
  - (a) "Certificate of coverage" means a document issued by the department that authorizes a discharge under a general permit.
  - (b) "Clean water act" means the federal water pollution control act, 33 USC 1251 to 1388.
  - (c) "Construction activity" means a human-made earth change or disturbance in the existing cover or topography of land that is 5 acres or more in size, for which a national permit is required pursuant to 40 CFR 122.26(a), and which is described as a construction activity in 40 CFR 122.26(b)(14)(x). Construction activity includes clearing, grading, and excavating activities. Construction activity does not include the practice of clearing, plowing, tilling soil, and harvesting for the purpose of crop production.
  - (d) "Fee" means a stormwater discharge fee authorized under this section.
  - (e) "Fund" means the stormwater fund created in section 3119.
  - (f) "General permit" means a permit issued authorizing a category of similar discharges.
  - (g) "Individual permit" means a site-specific permit.
  - (h) "Municipal separate storm sewer system" means all separate storm sewers that are owned or operated by the United States or a state, city, village, township, county, district, association, or other public body created

by or pursuant to state law, having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law, such as a sewer district, flood control district, or drainage district or similar entity, or a designated or approved management agency under section 208 of the clean water act, 33 USC 1288, that discharges to waters of the state. Municipal separate storm sewer system includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. Municipal separate storm sewer system does not include separate storm sewers in very discrete areas, such as individual buildings.

(i) "Notice of coverage" means a notice that a person engaging in construction activity agrees to comply with a permit by rule for that activity. A notice of coverage is not required to include a copy of an individual permit issued under part 91 if the notice of coverage includes a copy of a permit for the construction activity issued under part 615, 625, 631, 632, or 634, along with any forms or diagrams pertaining to soil erosion and sedimentation control that were part of the application for that permit.

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

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

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

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

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

(m) "Stormwater" means stormwater runoff, snowmelt runoff, and surface runoff and drainage.

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

Sec. 3120. (1) Until October 1, 2023, an application for a new permit, a reissuance of a permit, or a modification of an existing permit under this part authorizing a discharge into surface water, other than a storm water discharge, shall be accompanied by an application fee as follows:

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

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

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

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

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

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

(a) The department shall return to the applicant the application fee submitted under subsection (1).

(b) The applicant is not subject to an application fee.

(c) The applicant shall receive a 15% annual discount on an annual permit fee required for a permit issued based on that application.

(5) Until October 1, 2023, a person who receives a permit under this part authorizing a discharge into surface water, other than a stormwater discharge, is subject to an annual permit fee as follows:

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

(b) For an industrial or commercial facility that is an EPA minor facility, the following amount:

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

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

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

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

- (c) For a municipal facility that is an EPA major facility, the following amount:
  - (i) For an individual permit for a facility discharging 500 MGD or more, \$213,000.00.
  - (ii) For an individual permit for a facility discharging 50 MGD or more but less than 500 MGD, \$20,000.00.
  - (iii) For an individual permit for a facility discharging 10 MGD or more but less than 50 MGD, \$13,000.00.
  - (iv) For an individual permit for a facility discharging less than 10 MGD, \$5,500.00.
- (d) For a municipal facility that is an EPA minor facility, the following amount:
  - (i) For an individual permit for a facility discharging 10 MGD or more, \$3,775.00.
  - (ii) For an individual permit for a facility discharging 1 MGD or more but less than 10 MGD, \$3,000.00.
  - (iii) For an individual permit for a facility discharging less than 1 MGD, \$1,950.00.
  - (iv) For a general permit for a high-flow facility, \$600.00.
  - (v) For a general permit for a low-flow facility, \$400.00.
- (e) For a municipal facility that is a CSO facility, \$6,000.00.
- (f) For an individual permit for a wastewater stabilization lagoon, \$1,525.00.
- (g) For an individual or general permit for an agricultural purpose, \$600.00, unless either of the following applies:
  - (i) The facility is an EPA minor facility and would qualify for a general permit for a low-flow facility, in which case the fee is \$150.00.
  - (ii) The facility is an EPA major facility that is not a farmers' cooperative corporation, in which case the fee is \$8,700.00.
- (h) For a facility that holds a permit issued under this part but has no discharge and is connected to and is authorized to discharge only to a municipal wastewater treatment system, an annual permit maintenance fee of \$100.00. However, if a facility does have a discharge or at some time is no longer connected to a municipal wastewater treatment system, the annual permit fee shall be the appropriate fee as otherwise provided in this subsection.
- (6) If the person required to pay an application fee under subsection (1) or an annual permit fee under subsection (5) is a municipality, the municipality may pass on the application fee or the annual permit fee, or both, to each user of the municipal facility.
- (7) The department shall send invoices for annual permit fees under subsection (5) to all permit holders by December 1 of each year. A fee shall be based on the status of the facility as of October 1 of that year. A person subject to an annual permit fee shall pay the fee not later than January 15 of each year. Failure by the department to send a person an invoice by December 1, or failure of a person to receive an invoice, does not relieve that person of the obligation to pay the annual permit fee. If the department does not send invoices by December 1, the annual permit fee is due not later than 45 days after the permittee receives an invoice. The department shall forward annual permit fees received under this section to the state treasurer for deposit into the national pollutant discharge elimination system fund created in section 3121.
- (8) The department shall assess a penalty on all annual permit fee payments submitted under this section after the due date. The penalty is 0.75% of the payment due for each month or portion of a month the payment remains past due.
- (9) Following payment of an annual permit fee, if a permittee wishes to challenge its annual permit fee under this section, the owner or operator shall submit the challenge in writing to the department. The department shall not process the challenge unless it is received by the department by March 1 of the year the payment is due. A challenge shall identify the facility and state the grounds upon which the challenge is based. Within 30 calendar days after receipt of the challenge, the department shall determine the validity of the challenge and provide the permittee with notification of a revised annual permit fee and a refund, if appropriate, or a statement setting forth the reason or reasons why the annual permit fee was not revised. If the owner or operator of a facility desires to further challenge its annual permit fee, the owner or operator of the facility has an opportunity for a contested case hearing as provided for under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.
- (10) The attorney general may bring an action for the collection of the annual permit fee imposed under this section.
- (11) As used in this section:
  - (a) "Agricultural purpose" means the agricultural production or processing of those plants and animals useful to human beings produced by agriculture and includes, but is not limited to, forages and sod crops, grains and feed crops, field crops, dairy animals and dairy products, poultry and poultry products, cervidae, livestock, including breeding and grazing, equine, fish and other aquacultural products, bees and bee products,

berries, herbs, fruits, vegetables, flowers, seeds, grasses, nursery stock, trees and tree products, mushrooms, and other similar products, or any other product, as determined by the commission of agriculture and rural development, that incorporates the use of food, feed, fiber, or fur. Agricultural purpose includes an operation or facility that produces wine.

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

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

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

(e) "EPA major facility" means a major facility as defined in 40 CFR 122.2.

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

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

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

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

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

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

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

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

(n) "Municipal facility" means a facility that is designed to collect or treat sanitary wastewater, is either publicly or privately owned, and serves a residential area or a group of municipalities.

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

Sec. 30104. (1) A person shall not undertake a project subject to this part except as authorized by a permit issued by the department pursuant to part 13. An application for a permit shall include any information that may be required by the department. If a project includes activities at multiple locations, 1 application may be filed for the combined activities.

(2) Except as provided in subsections (3) and (4), until October 1, 2023, an application for a permit shall be accompanied by an application fee based on an administrative cost in accordance with the following schedule:

(a) For an initial permit for a seasonal drawdown or associated reflooding, or both, of a dam or impoundment for the purpose of weed control that is issued for the first time after October 9, 1995, a fee of \$500.00, but for subsequent permits for the same purpose a fee of \$50.00.

(b) For activities included in a minor project category established under section 30105(7), a fee of \$100.00.

(c) For activities included in a general permit category established under section 30105(8), a fee of \$50.00.

(d) For construction or expansion of a marina, a fee as follows:

(i) \$50.00 for an expansion of 1-10 slips to an existing permitted marina.

(ii) \$100.00 for a new marina with 1-10 proposed marina slips.

(iii) \$250.00 for an expansion of 11-50 slips to an existing permitted marina, plus \$10.00 for each slip over 50.

(iv) \$500.00 for a new marina with 11-50 proposed marina slips, plus \$10.00 for each slip over 50.

(v) \$1,500.00 if an existing permitted marina proposes maintenance dredging of 10,000 cubic yards or more, unless the dredge material has been determined through testing to be 90% or more sand, or the addition of seawalls, bulkheads, or revetments of 500 feet or more.

(e) For major projects other than a project described in subdivision (d)(v), involving any of the following, a fee of \$2,000.00:

(i) Dredging of 10,000 cubic yards or more, unless the dredge material has been determined through testing to be 90% or more sand.

- (ii) Filling of 10,000 cubic yards or more.
  - (iii) Seawalls, bulkheads, or revetments of 500 feet or more.
  - (iv) Filling or draining of 1 acre or more of wetland contiguous to a lake or stream.
  - (v) New dredging or upland boat basin excavation in areas of suspected contamination.
  - (vi) Shore projections, such as groins and underwater stabilizers, that extend 150 feet or more into a lake or stream.
  - (vii) New commercial docks or wharves of 300 feet or more in length.
  - (viii) Stream enclosures 100 feet or more in length.
  - (ix) Stream relocations 500 feet or more in length.
  - (x) New golf courses.
  - (xi) Subdivisions.
  - (xii) Condominiums.
  - (f) For the removal of submerged logs from bottomland of an inland lake, a \$500.00 fee.
  - (g) For all other projects not listed in subdivisions (a) through (f), a fee of \$500.00.
- (3) A project that requires review and approval under this part and 1 or more of the following acts or parts of acts is subject to only the single highest fee required under this part or the following acts or parts of acts:
- (a) Section 3104.
  - (b) Part 303.
  - (c) Part 323.
  - (d) Part 325.
  - (e) Section 117 of the land division act, 1967 PA 288, MCL 560.117.
- (4) If work has been done in violation of a permit requirement under this part and restoration is not ordered by the department, the department may accept an application for a permit if the application is accompanied by a fee equal to 2 times the permit fee required under this section.
- (5) If the department denies an application for a permit under this part, the department shall promptly refund the application fee paid under this section.

Sec. 30109. Upon the written request of a riparian owner and upon payment of a service fee, the department may enter into a written agreement with the riparian owner establishing the location of the ordinary high-water mark for his or her property. In the absence of substantially changed conditions, the agreement is conclusive proof of the location in all matters between the state and the riparian owner and his or her successors in interest. Until October 1, 2023, the service fee provided for in this section is \$500.00. The department shall forward service fees collected under this section to the state treasurer for deposit into the fund.

Sec. 32312. (1) To regulate the uses and development of high-risk areas, flood risk areas, and environmental areas and to implement the purposes of this part, the department shall promulgate rules. If permits are required under rules promulgated under this part, the permits shall be issued pursuant to the rules and part 13. Except as provided under subsection (2), until October 1, 2023, if permits are required pursuant to rules promulgated under this part, an application for a permit shall be accompanied by a fee as follows:

- (a) For a commercial or multifamily residential project, \$500.00.
  - (b) For a single-family home construction, \$100.00.
  - (c) For an addition to an existing single-family home or for a project that has a minor impact on fish and wildlife resources in environmental areas as determined by the department, \$50.00.
- (2) A project that requires review and approval under this part and under 1 or more of the following is subject to only the single highest permit fee required under this part or the following:
- (a) Part 301.
  - (b) Part 303.
  - (c) Part 325.
  - (d) Section 3104.
  - (e) Section 117 of the land division act, 1967 PA 288, MCL 560.117.
- (3) The department shall forward fees collected under this section to the state treasurer for deposit in the land and water management permit fee fund created in section 30113.

(4) A circuit court, upon petition and a showing by the department that a rule promulgated under subsection (1) has been violated, shall issue any necessary order to the defendant to correct the violation or to restrain the defendant from further violation of the rule.

Sec. 32513. (1) To obtain a permit for any activity specified in section 32512, a person shall file an application with the department on a form provided by the department. The application shall include all of the following:

(a) The name and address of the applicant.

(b) The legal description of the lands included in the project.

(c) A summary statement of the purpose of the project.

(d) A map or diagram showing the proposal on an adequate scale with contours and cross-section profiles of any waterway to be constructed.

(e) Other information required by the department.

(2) Except as provided in subsections (3) and (4), until October 1, 2023, an application for a permit under this section shall be accompanied by the following fee, as applicable:

(a) For a project in a category of activities for which a general permit is issued under section 32512a(2), a fee of \$50.00.

(b) For activities included in a minor project category established under section 32512a(1), a fee of \$100.00.

(c) For construction or expansion of a marina, a fee of:

(i) \$50.00 for an expansion of 1-10 slips to an existing permitted marina.

(ii) \$100.00 for a new marina with 1-10 proposed marina slips.

(iii) \$250.00 for an expansion of 11-50 slips to an existing permitted marina, plus \$10.00 for each slip over 50.

(iv) \$500.00 for a new marina with 11-50 proposed marina slips, plus \$10.00 for each slip over 50.

(v) \$1,500.00 if an existing permitted marina proposes maintenance dredging of 10,000 cubic yards or more, unless the dredge material has been determined through testing to be 90% or more sand, or the addition of seawalls, bulkheads, or revetments of 500 feet or more.

(d) For major projects other than a project described in subdivision (c)(v), involving any of the following, a fee of \$2,000.00:

(i) Dredging of 10,000 cubic yards or more, unless the dredge material has been determined through testing to be 90% or more sand.

(ii) Filling of 10,000 cubic yards or more.

(iii) Seawalls, bulkheads, or revetment of 500 feet or more.

(iv) Filling or draining of 1 acre or more of coastal wetland.

(v) New dredging or upland boat basin excavation in areas of suspected contamination.

(vi) New breakwater or channel jetty.

(vii) Shore protection, such as groins and underwater stabilizers, that extend 150 feet or more on Great Lakes bottomlands.

(viii) New commercial dock or wharf of 300 feet or more in length.

(e) For all other projects not listed in subdivisions (a) to (d), \$500.00.

(3) A project that requires review and approval under this part and 1 or more of the following is subject to only the single highest permit fee required under this part or the following:

(a) Section 3104.

(b) Part 301.

(c) Part 303.

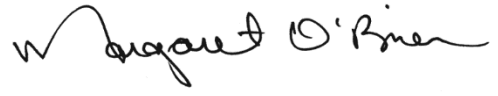
(d) Part 323.

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

(4) If work has been done in violation of a permit requirement under this part and restoration is not ordered by the department, the department may accept an application for a permit if the application is accompanied by a fee equal to 2 times the permit fee otherwise required under this section.


(5) The department shall forward fees collected under this section to the state treasurer for deposit into the land and water management permit fee fund created in section 30113.

This act is ordered to take immediate effect.



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Secretary of the Senate



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Clerk of the House of Representatives

Approved \_\_\_\_\_

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Governor