

Act No. 91

Public Acts of 2004

Approved by the Governor

April 22, 2004

Filed with the Secretary of State

April 22, 2004

EFFECTIVE DATE: April 22, 2004

STATE OF MICHIGAN

92ND LEGISLATURE

REGULAR SESSION OF 2004

Introduced by Senators Brater, Jacobs, Cherry, Barcia, Olshove, Clark-Coleman, Schauer, Bernero, Scott, Clarke and Basham

ENROLLED SENATE BILL No. 252

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 prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, and assessments; to provide certain appropriations; to prescribe penalties and provide remedies; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts," by amending sections 3103, 3112, 3113, 3115, 3118, and 3119 (MCL 324.3103, 324.3112, 324.3113, 324.3115, 324.3118, and 324.3119), section 3118 as amended by 1999 PA 35 and section 3119 as amended by 1999 PA 106, and by adding sections 3120 and 3121.

The People of the State of Michigan enact:

Sec. 3103. (1) The department shall protect and conserve the water resources of the state and shall have control of the pollution of surface or underground waters of the state and the Great Lakes, which are or may be affected by waste disposal of any person. The department may make or cause to be made surveys, studies, and investigations of the uses of waters of the state, both surface and underground, and cooperate with other governments and governmental units and agencies in making the surveys, studies, and investigations. The department shall assist in an advisory capacity a flood control district that may be authorized by the legislature. The department, in the public interest, shall appear and present evidence, reports, and other testimony during the hearings involving the creation and organization of flood control districts. The department shall advise and consult with the legislature on the obligation of the state to participate in the costs of construction and maintenance as provided for in the official plans of a flood control district or intercounty drainage district.

(2) The department shall enforce this part and may promulgate rules as it considers necessary to carry out its duties under this part. However, notwithstanding any rule-promulgation authority that is provided in this part, the department shall not promulgate any additional rules under this part after December 31, 2006.

(3) The department may promulgate rules and take other actions as may be necessary to comply with the federal water pollution control act, chapter 758, 86 Stat. 816, 33 USC 1251 to 1252, 1253 to 1254, 1255 to 1257, 1258 to 1270, 1281, 1282

to 1293, 1294 to 1299, 1311 to 1313, 1314 to 1330, 1341 to 1345, 1361 to 1377, and 1381 to 1387, and to expend funds available under such law for extension or improvement of the state or interstate program for prevention and control of water pollution. This part shall not be construed as authorizing the department to expend or to incur any obligation to expend any state funds for such purpose in excess of any amount that is appropriated by the legislature.

(4) Notwithstanding the limitations on rule promulgation under subsection (2), rules promulgated under this part before January 1, 2007 shall remain in effect unless rescinded.

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

(2) An application for a permit under subsection (1) shall be submitted to the department. Within 30 days after an application for a new or increased use is received, the department shall determine whether the application is administratively complete. Within 90 days after an application for reissuance of a permit is received, the department shall determine whether the application is administratively complete. If the department determines that an application is not complete, the department shall notify the applicant in writing within the applicable time period. If the department does not make a determination as to whether the application is complete within the applicable time period, the application shall be considered to be complete.

(3) The department shall condition the continued validity of a permit upon the permittee's meeting the effluent requirements that the department considers necessary to prevent unlawful pollution by the dates that the department considers to be reasonable and necessary and to assure compliance with applicable federal law and regulations. If the department finds that the terms of a permit have been, are being, or may be violated, it may modify, suspend, or revoke the permit or grant the permittee a reasonable period of time in which to comply with the permit. The department may reissue a revoked permit upon a showing satisfactory to the department that the permittee has corrected the violation. A person who has had a permit revoked may apply for a new permit.

(4) If the department determines that a person is causing or is about to cause unlawful pollution of the waters of this state, the department may notify the alleged offender of its determination and enter an order requiring the person to abate the pollution or refer the matter to the attorney general for legal action, or both.

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

Sec. 3113. (1) A person who seeks a new or increased use of the waters of the state for sewage or other waste disposal purposes shall file with the department an application setting forth the information required by the department, including the nature of the enterprise or development contemplated, the amount of water required to be used, its source, the proposed point of discharge of the wastes into the waters of the state, the estimated amount to be discharged, and a statement setting forth the expected bacterial, physical, chemical, and other known characteristics of the wastes.

(2) If a permit is granted, the department shall condition the permit upon such restrictions that the department considers necessary to adequately guard against unlawful uses of the waters of the state as are set forth in section 3109.

(3) If the permit or denial of a new or increased use is not acceptable to the permittee, the applicant, or any other person, the permittee, the applicant, or other person may file a sworn petition with the department setting forth the grounds and reasons for the complaint and asking for a contested case hearing on the matter pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. A petition filed more than 60 days after action on the permit application may be rejected by the department as being untimely.

Sec. 3115. (1) The department may request the attorney general to commence a civil action for appropriate relief, including a permanent or temporary injunction, for a violation of this part or a provision of a permit, order, rule, or stipulation of the department. An action under this subsection may be brought in the circuit court for the county of Ingham or for the county in which the defendant is located, resides, or is doing business. If requested by the defendant within 21 days after service of process, the court shall grant a change of venue to the circuit court for the county of Ingham or for the county in which the

alleged violation occurred, is occurring, or, in the event of a threat of violation, will occur. The court has jurisdiction to restrain the violation and to require compliance. In addition to any other relief granted under this subsection, the court shall impose a civil fine of not less than \$2,500.00 and may award reasonable attorney fees and costs to the prevailing party. However, the maximum fine imposed by the court shall be not more than \$25,000.00 per day of violation.

(2) A person who at the time of the violation knew or should have known that he or she discharged a substance contrary to this part, or contrary to a permit, order, rule, or stipulation of the department, or who intentionally makes a false statement, representation, or certification in an application for or form pertaining to a permit or in a notice or report required by the terms and conditions of an issued permit, or who intentionally renders inaccurate a monitoring device or record required to be maintained by the department, is guilty of a felony and shall be fined not less than \$2,500.00 or more than \$25,000.00 for each violation. The court may impose an additional fine of not more than \$25,000.00 for each day during which the unlawful discharge occurred. If the conviction is for a violation committed after a first conviction of the person under this subsection, the court shall impose a fine of not less than \$25,000.00 per day and not more than \$50,000.00 per day of violation. Upon conviction, in addition to a fine, the court in its discretion may sentence the defendant to imprisonment for not more than 2 years or impose probation upon a person for a violation of this part. With the exception of the issuance of criminal complaints, issuance of warrants, and the holding of an arraignment, the circuit court for the county in which the violation occurred has exclusive jurisdiction. However, the person shall not be subject to the penalties of this subsection if the discharge of the effluent is in conformance with and obedient to a rule, order, or permit of the department. In addition to a fine, the attorney general may file a civil suit in a court of competent jurisdiction to recover the full value of the injuries done to the natural resources of the state and the costs of surveillance and enforcement by the state resulting from the violation.

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

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

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

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

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

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

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

(a) Be payable to the state of Michigan and credited to the general fund.

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

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

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

(10) In addition to any other method of collection, any fine or other award ordered paid may be recovered by right of setoff to

any debt owed to the defendant by the state of Michigan, including the right to a refund of income taxes paid.

Sec. 3118. (1) Until October 1, 2009, the department shall collect storm water discharge fees from persons who apply for or have been issued storm water discharge permits as follows:

(a) A 1-time fee of \$400.00 is required for a permit related solely to a site of construction activity for each permitted site. The fee shall be submitted by the permit applicant with his or her 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 along with his or her 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 is required for a permit related solely to a storm water discharge associated with industrial activity or from a commercial site for which the department determines a permit is needed.

(c) An annual fee of \$500.00 is required for a permit for a municipal separate storm sewer system, unless the permit is issued to a city, a village, a township, or a county or is a single permit authorization for municipal separate storm sewer systems in multiple locations statewide.

(d) An annual fee for a permit for a municipal separate storm sewer system issued to a city, village, or township shall be determined by its population in an urbanized area as defined by the United States bureau of the census. The fee shall be based on the latest available decennial census as follows:

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

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

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

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

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

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

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

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

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

(f) An annual fee 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 shall be determined in accordance with a memorandum of understanding between that state or federal agency and the department and shall be based on the projected needs by the department to administer the permit.

(2) The permit fees identified in subsection (1) are nonrefundable.

(3) 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 fee assessment notification by the deadline, or failure of a person to receive a fee assessment notification, does not relieve that person of his or her 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 receiving a

fee notification.

(4) If a storm water permit is issued for a drainage district, the drainage district is responsible for the applicable fee under this section.

(5) 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.

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

(7) The department shall make payment of the required fee assessed under this section a condition of issuance or reissuance of a permit not related solely to a site of construction activity.

(8) 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.

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

(10) If the permit is for a municipal separate storm sewer system and the population served by that system is different than 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.

(11) A person who wishes to appeal either a fee or a penalty assessed under this section is limited to an administrative appeal, in accordance with section 631 of the revised judicature act of 1961, 1961 PA 236, MCL 600.631. The appeal shall be filed within 30 days of the department's fee notification under subsection (3).

(12) 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, chapter 758, 86 Stat. 816, 33 U.S.C. 1251 to 1252, 1253 to 1254, 1255 to 1257, 1258 to 1263, 1265 to 1270, 1273 to 1274, 1281, 1282 to 1293, 1294 to 1301, 1311 to 1313, 1314 to 1330, 1341 to 1346, 1361 to 1375, 1376 to 1377, and 1381 to 1387.

(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 C.F.R. 122.26(a), and which is described as a construction activity in 40 C.F.R. 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 storm water discharge fee authorized under this section.

(e) "Fund" means the storm water 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, storm water, 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 U.S.C. 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.

(j) "Permit" or "storm water 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 rules and regulations promulgated under that act or this part.

(k) "Public body" means the United States, the state of Michigan, a city, village, township, county, school district, public college or university, or single purpose governmental agency, or any other body which is created by federal or state statute or 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, which has the following characteristics:

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

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

(m) "Storm water" means storm water runoff, snowmelt runoff, and surface runoff and drainage.

(n) "Storm water discharge associated with industrial activity" means a point source discharge of storm water from a facility which is defined as an industrial activity under 40 C.F.R. 122.26(b)(14)(i-ix and xi).

Sec. 3119. (1) The storm water 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.

(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 for 1 or more of the following purposes:

(a) Review of storm water permit applications.

(b) Storm water permit development, issuance, reissuance, modification, and termination.

(c) Surface water monitoring to support the storm water permitting process.

(d) Assessment of compliance with storm water permit conditions.

(e) Enforcement against storm water permit violations.

(f) Classification of storm water control facilities.

(g) Not more than 10% of the money in the fund for training for certification of storm water operators and educational

material to assist persons regulated under this part.

(h) Regional or statewide public education to enhance the effectiveness of storm water permits.

(5) Money in the fund shall not be used to support the direct costs of litigation undertaken to enforce this part.

(6) Upon the expenditure or appropriation of money raised in section 3118 for any other purpose than those specifically listed in this section, authorization to collect fees under section 3118 shall be suspended until such time as the money expended or appropriated for purposes other than those listed in this section is returned to the fund.

(7) By January 1, 2006 and by January 1 of each year thereafter, the department shall prepare and submit to the governor, the legislature, the chairs of the standing committees of the senate and house of representatives with primary responsibility for issues related to natural resources and the environment, and the chairs of the subcommittees of the senate and house appropriations committees with primary responsibility for appropriations to the department a report that details the departmental activities of the previous fiscal year in administering the department's storm water program that were funded by the fund. This report shall include, at a minimum, all of the following:

(a) The number of full-time equated positions performing each of the following functions:

(i) Permit issuance and development.

(ii) Compliance.

(iii) Enforcement.

(b) The number of new permit applications received by the department in the preceding year.

(c) The number of renewal permits in the preceding year.

(d) The number of permit modifications requested in the preceding year.

(e) The number of staff hours dedicated to each of the fee categories listed in section 3118.

(f) The number of permits issued for fee categories listed in section 3118.

(g) The average number of days required for review of a permit from the date the permit application is determined to be administratively complete.

(h) The number of permit applications denied.

(i) The number of permit applications withdrawn by the applicant.

(j) The percentage and number of permit applications that were reviewed for administrative completeness within 10 days of receipt by the department.

(k) The percentage and number of permit applications submitted to the department that were administratively complete as received.

(l) The percentage and number of new permit applications for which a final action was taken by the department within 180 days.

- (m) The percentage and number of permit renewals and modifications processed within the required time.
- (n) The number of permits reopened by the department.
- (o) The number of unfilled positions dedicated to the department's storm water program.
- (p) The amount of revenue in the fund at the end of the fiscal year.

Sec. 3120. (1) Until October 1, 2009, 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), the department shall return to the applicant the application fee submitted under subsection (1) and the applicant shall not be subject to an application fee and shall receive a 15% annual discount on an annual permit fee required for a permit issued based upon that application.
- (5) Until October 1, 2009, 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 amounts:
 - (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 amounts:
 - (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 amounts:
- (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 would be \$150.00.
- (ii) The facility is an EPA major facility that is not a farmers' cooperative corporation, in which case the fee would be \$8,700.00.
- (h) For a facility that holds a permit issued under this part but has no discharge and the facility 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 point 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. The 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 an invoice by the deadline, or failure of a person to receive an invoice, does not relieve that person of his or her obligation to pay the annual permit fee. If the department does not meet the December 1 deadline for sending invoices, the annual permit fee is due not later than 45 days after receiving 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 shall be an amount equal to 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) Within 30 days after the effective date of the amendatory act that added this section, the director of the department shall notify each person holding a permit under this part authorizing a discharge into surface water, other than a storm water permit, of the requirements of this section.

(12) 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, 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 which 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 facility that is designated by the United States environmental protection agency as being a major facility under 40 C.F.R. 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, and is either publicly or privately owned, and serves a residential area or a group of municipalities.

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

Sec. 3121. (1) The national pollutant discharge elimination system 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.

(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 administer the national pollutant discharge elimination system program under this part including, but not limited to, all of the following:

(a) Water quality standards development and maintenance.

(b) Permit development and issuance.

(c) Maintenance of program data.

(d) Ambient water quality monitoring conducted to determine permit conditions and evaluate the effectiveness of permit requirements.

(e) Activities conducted to determine a discharger's permit compliance status, including, but not limited to, inspections, discharge monitoring, and review of submittals.

(f) Laboratory services.

(g) Enforcement.

(h) Program administration activities.

(5) By January 1, 2006 and by January 1 of each year thereafter, the department shall prepare and submit to the governor, the legislature, the chairs of the standing committees of the senate and house of representatives with primary responsibility for issues related to natural resources and the environment, and the chairs of the subcommittees of the senate and house appropriations committees with primary responsibility for appropriations to the department a report that details the departmental activities of the previous fiscal year in administering the department's national pollutant discharge elimination system program that were funded by the fund. This report shall include, at a minimum, all of the following as it relates to the department:

(a) The number of full-time equated positions performing each of the following functions:

(i) Permit issuance and development.

(ii) Compliance.

(iii) Enforcement.

(b) The number of permit applications received by the department in the preceding year, including applications for new and

increased uses and reissuances.

- (c) The number of staff hours dedicated to each of the fee categories listed in section 3120.
 - (d) The number of permits issued for fee categories listed in section 3120.
 - (e) The number of permit applications denied.
 - (f) The number of permit applications withdrawn by the applicant.
 - (g) The percentage and number of permit applications that were reviewed for administrative completeness within statutory time frames.
 - (h) The percentage and number of permit applications submitted to the department that were administratively complete as received.
 - (i) The percentage and number of permit applications for which a final action was taken by the department within statutory time frames for new and increased uses and reissuances.
 - (j) The number of permits reopened by the department.
 - (k) The number of unfilled positions dedicated to the national pollutant discharge elimination system program.
 - (l) The amount of revenue in the fund at the end of the fiscal year.
- (6) As used in this section:
- (a) "Fund" means the national pollutant discharge elimination system fund created in subsection (1).
 - (b) "National pollutant discharge elimination system program" means the national pollutant discharge elimination system program delegated to the department under section 402 of title IV of the federal water pollution control act, chapter 758, 86 Stat. 880, 33 U.S.C. 1342, and implemented under this part.

This act is ordered to take immediate effect.

Secretary of the Senate

Clerk of the House of Representatives

Approved

Governor