

**SUBSTITUTE FOR
SENATE BILL NO. 977**

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 3101 and 3115 (MCL 324.3101 and 324.3115),
section 3101 as amended by 2001 PA 114, and by adding section
3111b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3101. As used in this part:

2 (a) "Aquatic nuisance species" means a nonindigenous species
3 that threatens the diversity or abundance of native species or
4 the ecological stability of infested waters, or commercial,
5 agricultural, aquacultural, or recreational activities dependent
6 on such waters.

7 (b) "Ballast water" means water and associated solids taken
8 on board a vessel to control or maintain trim, draft, stability,
9 or stresses on the vessel, without regard to the manner in which

1 it is carried.

2 (c) "Ballast water treatment method" means a method of
3 treating ballast water and sediments to remove or destroy living
4 biological organisms through 1 or more of the following:

5 (i) Filtration.

6 (ii) The application of biocides or ultraviolet light.

7 (iii) Thermal methods.

8 (iv) Other treatment techniques approved by the department.

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

11 (e) "Detroit consumer price index" means the most
12 comprehensive index of consumer prices available for the Detroit
13 area from the United States department of labor, bureau of labor
14 statistics.

15 (f) **"Emergency management coordinator" means that term as**
16 **defined in section 2 of the emergency management act, 1976 PA**
17 **390, MCL 30.402.**

18 (g) ~~-(f)-~~ "Great Lakes" means the Great Lakes and their
19 connecting waters, including ~~lake~~ **Lake** St. Clair.

20 (h) ~~-(g)-~~ "Local unit" means a county, city, village, or
21 township or an agency or instrumentality of any of these
22 entities.

23 (i) **"Local health department" means that term as defined in**
24 **section 1105 of the public health code, 1978 PA 368, MCL**
25 **333.1105.**

26 (j) ~~-(h)-~~ "Municipality" means this state, a county, city,
27 village, or township, or an agency or instrumentality of any of

1 these entities.

2 **(k) "National response center" means the national**
3 **communications center established under the clean water act, 33**
4 **USC 1251 to 1387, located in Washington, DC, that receives and**
5 **relays notice of oil discharge or releases of hazardous**
6 **substances to appropriate federal officials.**

7 **(l) —(i)— "Nonocean-going vessel" means a vessel that is not**
8 **an ocean-going vessel.**

9 **(m) —(j)— "Ocean-going vessel" means a vessel that operates on**
10 **the Great Lakes or the St. Lawrence waterway after operating in**
11 **waters outside of the Great Lakes or the St. Lawrence waterway.**

12 **(n) "Primary public safety answering point" means that term**
13 **as defined in section 102 of the emergency telephone service**
14 **enabling act, 1986 PA 32, MCL 484.1102.**

15 **(o) —(k)— "Sediments" means any matter settled out of ballast**
16 **water within a vessel.**

17 **(p) —(l)— "Sewage sludge" means sewage sludge generated in**
18 **the treatment of domestic sewage, other than only septage or**
19 **industrial waste.**

20 **(q) —(m)— "Sewage sludge derivative" means a product for land**
21 **application derived from sewage sludge that does not include**
22 **solid waste or other waste regulated under this act.**

23 **(r) —(n)— "Sewage sludge generator" means a person who**
24 **generates sewage sludge that is applied to land.**

25 **(s) —(o)— "Sewage sludge distributor" means a person who**
26 **applies, markets, or distributes, except at retail, a sewage**
27 **sludge derivative.**

1 (t) ~~(p)~~ "St. Lawrence waterway" means the St. Lawrence
2 river, the St. Lawrence seaway, and the gulf of St. Lawrence.

3 (u) "Threshold reporting quantity" means that term as defined
4 in R 324.2002 of the Michigan administrative code.

5 (v) ~~(q)~~ "Waters of the state" means groundwaters, lakes,
6 rivers, and streams and all other watercourses and waters,
7 including the Great Lakes, within the jurisdiction of this
8 state.

9 Sec. 3111b. (1) If a person is required to report a release
10 to the department under part 5 of the water resources protection
11 rules, R 324.2001 to 324.2009 of the Michigan administrative
12 code, the person, via a 9-1-1 call, shall at the same time report
13 the release to the primary public safety answering point serving
14 the jurisdiction where the release occurred. If the person is
15 required to subsequently submit to the department a written
16 report on the release under part 5 of the water resources
17 protection rules, R 324.2001 to 324.2009 of the Michigan
18 administrative code, the person shall at the same time submit a
19 copy of the report to the local health department serving the
20 jurisdiction where the release occurred.

21 (2) If the department of state police or other state agency
22 receives notification, pursuant to an agreement with or the laws
23 of another state, Canada, or the province of Ontario, of the
24 release in that other jurisdiction of a polluting material in
25 excess of the threshold reporting quantity and if the polluting
26 material has entered or may enter surface waters or groundwaters
27 of this state, the department of state police or other state

1 agency shall contact the primary public safety answering point
2 serving each county that may be affected by the release.

3 (3) The emergency management coordinator of each county shall
4 develop and oversee the implementation of a plan to provide
5 timely notification of a release required to be reported under
6 subsection (1) or (2) to appropriate local, state, and federal
7 agencies.

8 (4) If rules promulgated under this part require a person to
9 maintain a pollution incident prevention plan, the person shall
10 update the plan to include the requirements of subsection (1)
11 when conducting any evaluation of the plan required by rule.

12 (5) If a person reports to the department a release described
13 under subsection (1), the department shall do both of the
14 following:

15 (a) Notify the person of the requirements imposed under
16 subsection (1).

17 (b) Request that the person, even if not responsible for the
18 release, report the release, via a 9-1-1 call, to the primary
19 public safety answering point serving 1 of the following, as
20 applicable:

21 (i) The jurisdiction where the release occurred, if known.

22 (ii) The jurisdiction where the release was discovered, if
23 the jurisdiction where the release occurred is not known.

24 (6) The department shall notify the public and interested
25 parties, by posting on its website within 30 days after the
26 effective date of the amendatory act that added this section and
27 by other appropriate means, of all of the following:

1 (a) The requirements of subsection (1).

2 (b) The relevant voice, and, if applicable, facsimile
3 telephone numbers of the department and the national response
4 center.

5 (c) The criminal and civil sanctions under section 3115
6 applicable to a violation of subsection (1).

7 (7) Failure of the department to provide a person with the
8 notification required under subsection (5) or (6) does not
9 relieve the person of any obligation to report a release or other
10 legal obligation.

11 (8) The department shall biennially do both of the
12 following:

13 (a) Evaluate the state and local reporting system established
14 under this section.

15 (b) Submit to the standing committees of the senate and house
16 of representatives with primary responsibility for environmental
17 protection issues a written report on any changes recommended to
18 the reporting system.

19 Sec. 3115. (1) The department may request the attorney
20 general to commence a civil action for appropriate relief,
21 including a permanent or temporary injunction, for a violation of
22 this part or a provision of a permit, order, rule, or stipulation
23 of the department. An action under this subsection may be
24 brought in the circuit court for the county of Ingham or for the
25 county in which the defendant is located, resides, or is doing
26 business. The court has jurisdiction to restrain the violation
27 and to require compliance. In addition to any other relief

1 granted under this subsection, the court shall impose a civil
2 fine of not less than \$2,500.00 and may award reasonable attorney
3 fees and costs to the prevailing party. However, the maximum
4 fine imposed by the court shall be not more than \$25,000.00 per
5 day of violation.

6 (2) A person who at the time of the violation knew or should
7 have known that he or she discharged a substance contrary to this
8 part, or contrary to a permit, order, rule, or stipulation of the
9 department, or who intentionally makes a false statement,
10 representation, or certification in an application for or form
11 pertaining to a permit or in a notice or report required by the
12 terms and conditions of an issued permit, or who intentionally
13 renders inaccurate a monitoring device or record required to be
14 maintained by the department, **or who knows or should know that he**
15 **or she is required to report a release, under section 311b, and**
16 **fails to report the release** is guilty of a felony and shall be
17 fined not less than \$2,500.00 or more than \$25,000.00 for each
18 violation. The court may impose an additional fine of not more
19 than \$25,000.00 for each day during which the unlawful discharge
20 occurred **or the person knew or should have known that he or she**
21 **was required to report the release, under section 311b, and**
22 **failed to report the release.** If the conviction is for a
23 violation committed after a first conviction of the person under
24 this subsection, the court shall impose a fine of not less than
25 \$25,000.00 per day and not more than \$50,000.00 per day of
26 violation. Upon conviction, in addition to a fine, the court in
27 its discretion may sentence the defendant to imprisonment for not

1 more than 2 years or impose probation upon a person for a
2 violation of this part. With the exception of the issuance of
3 criminal complaints, issuance of warrants, and the holding of an
4 arraignment, the circuit court for the county in which the
5 violation occurred has exclusive jurisdiction. However, the
6 person shall not be subject to the penalties of this subsection
7 if the discharge of the effluent is in conformance with and
8 obedient to a rule, order, or permit of the department. In
9 addition to a fine, the attorney general may file a civil suit in
10 a court of competent jurisdiction to recover the full value of
11 the injuries done to the natural resources of the state and the
12 costs of surveillance and enforcement by the state resulting from
13 the violation.

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

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

25 (5) To find a defendant civilly or criminally liable for
26 substantial endangerment under subsections (3) and (4), the court
27 shall determine that the defendant knowingly or recklessly acted

1 in such a manner as to cause a danger of death or serious bodily
2 injury and that either of the following occurred:

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

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

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

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

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

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

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

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

27 (10) In addition to any other method of collection, any fine

1 or other award ordered paid may be recovered by right of setoff
2 to any debt owed to the defendant by the state of Michigan,
3 including the right to a refund of income taxes paid.