

HOUSE BILL No. 5103

September 30, 2003, Introduced by Reps. Pastor, Hoogendyk, Stahl, LaJoy, Casperson, Taub, Amos, Pappageorge, Palmer, Drolet, Milosch, Nitz, Acciavatti, Vander Veen and Farhat and referred to the Committee on Government Operations.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 11511, 11516, and 30307 (MCL 324.11511, 324.11516, and 324.30307), section 11511 as amended by 1996 PA 358, section 11516 as amended by 2003 PA 153, and section 30307 as amended by 1998 PA 228, and by adding sections 1301 and 1311.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 **Sec. 1301. As used in this part:**

2 (a) "Department" means the department of environmental
3 quality or an officer thereof, whichever is authorized to approve
4 or deny an application for a permit.

5 (b) "Permit" means a permit or operating license under this
6 act.

7 **Sec. 1311. (1) If the department fails to approve or deny,**
8 or make a final decision on the approval or denial of, an

1 administratively complete application for a permit by a deadline
2 imposed by this act or a rule promulgated under this act, the
3 permit shall be considered to be issued.

4 (2) Subsection (1) does not apply in circumstances in which
5 it would violate federal law.

6 Sec. 11511. (1) The department shall make a final decision
7 as to whether to issue a construction permit within 120 days
8 after the department receives an administratively complete
9 application. The decision of the department and the reasons for
10 the decision shall be in writing with specific reference to this
11 part or rules promulgated under this part for any substantiation
12 of denial of the permit application and shall be sent by
13 first-class mail to the clerk of the municipality in which the
14 disposal area is proposed to be located and to the applicant
15 within 10 days after the final decision is made. ~~If the~~
16 ~~department fails to make a final decision within 120 days, the~~
17 ~~permit shall be considered issued.~~

18 (2) A construction permit shall expire 1 year after the date
19 of issuance, unless development under the construction permit is
20 initiated within that year. A construction permit that has
21 expired may be renewed upon payment of a permit renewal fee and
22 submission of any additional information the department may
23 require.

24 (3) Except as otherwise provided in this subsection, the
25 department shall not issue a construction permit for a disposal
26 area within a planning area unless a solid waste management plan
27 for that planning area has been approved pursuant to sections

1 11536 and 11537 and unless the disposal area complies with and is
2 consistent with the approved solid waste management plan. The
3 department may issue a construction permit for a disposal area
4 designed to receive ashes produced in connection with the
5 combustion of fossil fuels for electrical power generation in the
6 absence of an approved county solid waste management plan, upon
7 receipt of a letter of approval from whichever county or
8 counties, group of municipalities, or regional planning agency
9 has prepared or is preparing the county solid waste management
10 plan for that planning area under section 11533 and from the
11 municipality in which the disposal area is to be located.

12 Sec. 11516. (1) Subject to subsection (4), the department
13 shall conduct a consistency review and make a final decision on
14 ~~a~~ **an operating** license application within 90 days after the
15 department receives an administratively complete application.
16 The decision of the department and the reasons for the decision
17 shall be documented in writing with specific reference to this
18 part or rules promulgated under this part and shall be sent by
19 first-class mail to the clerk of the municipality in which the
20 disposal area is located and to the applicant within 10 days
21 after the final decision is made. ~~If the department fails to~~
22 ~~make a final decision within 90 days, the license is considered~~
23 ~~issued.~~

24 (2) An operating license shall expire 5 years after the date
25 of issuance. An operating license may be renewed before
26 expiration upon payment of a renewal application fee specified in
27 section ~~11512(8)~~ **11512(7)** if the licensee is in compliance with

1 this part and the rules promulgated under this part.

2 (3) The issuance of the operating license under this part
3 empowers the department or a health officer or an authorized
4 representative of a health officer to enter at any reasonable
5 time, pursuant to law, in or upon private or public property
6 licensed under this part for the purpose of inspecting or
7 investigating conditions relating to the storage, processing, or
8 disposal of any material.

9 (4) Except as otherwise provided in this subsection, the
10 department shall not issue an operating license for a new
11 disposal area within a planning area unless a solid waste
12 management plan for that planning area has been approved pursuant
13 to sections 11536 and 11537 and unless the disposal area complies
14 with and is consistent with the approved solid waste management
15 plan. The department may issue an operating license for a
16 disposal area designed to receive ashes produced in connection
17 with the combustion of fossil fuels for electrical power
18 generation in the absence of an approved county solid waste
19 management plan, upon receipt of a letter of approval from
20 whichever county or counties, group of municipalities, or
21 regional planning agency has prepared or is preparing the county
22 solid waste management plan for that planning area under
23 section 11533 and from the municipality in which the disposal
24 area is to be located.

25 (5) Issuance of an operating license by the department
26 authorizes the licensee to accept waste for disposal in certified
27 portions of the disposal area for which a bond was established

1 under section 11523 and, for type II landfills, for which
2 financial assurance was demonstrated under section 11523a. If
3 the construction of a portion of a landfill licensed under this
4 section is not complete at the time of license application, the
5 owner or operator of the landfill shall submit a certification
6 under the seal of a licensed professional engineer verifying that
7 the construction of that portion of the landfill has proceeded
8 according to the approved plans, at least 60 days prior to the
9 anticipated date of waste disposal in that portion of the
10 landfill. If the department does not deny the certification
11 within 60 days of receipt, the owner or operator may accept waste
12 for disposal in the certified portion. In the case of a denial,
13 the department shall issue a written statement stating the
14 reasons why the construction or certification is not consistent
15 with this part or rules promulgated under this part or the
16 approved plans.

17 Sec. 30307. (1) Within 60 days after receipt of the
18 completed application and fee, the department may hold a
19 hearing. If a hearing is held, it shall be held in the county
20 where the wetland to which the permit is to apply is located.
21 Notice of the hearing shall be made in the same manner as for the
22 promulgation of rules under the administrative procedures act of
23 1969, 1969 PA 306, MCL 24.201 to 24.328. The department may
24 approve or disapprove a permit application without a public
25 hearing unless a person requests a hearing in writing within 20
26 days after the mailing of notification of the permit application
27 as required by subsection (3) or unless the department determines

1 that the permit application is of ~~significant impact~~ **such**
2 **significance as** to warrant a public hearing.

3 (2) If a hearing is not held, the department shall approve or
4 disapprove the permit application within 90 days after the
5 completed permit application is filed with the department. If a
6 hearing is held, the department shall approve or disapprove the
7 permit application within 90 days after the conclusion of the
8 hearing. The department may approve a permit application,
9 request modifications in the application, or deny the permit
10 application. If the department approves the permit application,
11 the department shall prepare and send the permit to the
12 applicant. If the department denies, or requests a modification
13 of, the permit application, the department shall send notice of
14 the denial or modification request and the reasons for the denial
15 or the modifications requested to the applicant. Department
16 approval may include the issuance of a permit containing
17 conditions necessary for compliance with this part. ~~If the~~
18 ~~department does not approve or disapprove the permit application~~
19 ~~within the time provided by this subsection, the permit~~
20 ~~application shall be considered approved, and the department~~
21 ~~shall be considered to have made the determinations required by~~
22 ~~section 30311.~~ The action taken by the department may be
23 appealed pursuant to the administrative procedures act of 1969,
24 1969 PA 306, MCL 24.201 to 24.328. A property owner may, after
25 exhaustion of administrative remedies, bring appropriate legal
26 action in a court of competent jurisdiction.

27 (3) A person who desires notification of pending permit

1 applications may make a written request to the department
2 accompanied by an annual fee of \$25.00, which shall be credited
3 to the general fund of the state. The department shall prepare a
4 biweekly list of the applications made during the previous 2
5 weeks and shall promptly mail copies of the list for the
6 remainder of the calendar year to the persons who requested
7 notice. The biweekly list shall state the name and address of
8 each applicant, the location of the wetland in the proposed use
9 or development, including the size of both the proposed use or
10 development and of the wetland affected, and a summary statement
11 of the purpose of the use or development.

12 (4) A local unit of government may regulate wetland within
13 its boundaries, by ordinance, only as provided under this part.
14 This subsection is supplemental to the existing authority of a
15 local unit of government. An ordinance adopted by a local unit
16 of government pursuant to this subsection shall comply with all
17 of the following:

18 (a) The ordinance shall not provide a different definition of
19 wetland than is provided in this part, except that a wetland
20 ordinance may regulate wetland of less than 5 acres in size.

21 (b) If the ordinance regulates wetland that is smaller than 2
22 acres in size, the ordinance shall comply with section 30309.

23 (c) The ordinance shall comply with sections 30308 and
24 30310.

25 (d) The ordinance shall not require a permit for uses that
26 are authorized without a permit under section 30305, and shall
27 otherwise comply with this part.

1 (5) Each local unit of government that adopts an ordinance
2 regulating wetlands under subsection (4) shall notify the
3 department.

4 (6) A local unit of government that adopts an ordinance
5 regulating wetlands shall use an application form supplied by the
6 department, and each person applying for a permit shall make
7 application directly to the local unit of government. Upon
8 receipt, the local unit of government shall forward a copy of
9 each application along with any state fees that may have been
10 submitted under section 30306 to the department. The department
11 shall begin reviewing the application as provided in this part.
12 The local unit of government shall review the application
13 pursuant to its ordinance and shall modify, approve, or deny the
14 application within 90 days after receipt. If a municipality does
15 not approve or disapprove the permit application within the time
16 period provided by this subsection, the permit application shall
17 be considered approved, and the municipality shall be considered
18 to have made the determinations as listed in section 30311. The
19 denial of a permit shall be accompanied by a written statement of
20 all reasons for denial. The failure to supply complete
21 information with a permit application may be reason for denial of
22 a permit. The department shall inform any interested person
23 whether or not a local unit of government has an ordinance
24 regulating wetlands. If the department receives an application
25 with respect to a wetland which is located in a local unit of
26 government ~~which~~ **that** has an ordinance regulating wetlands, the
27 department immediately shall forward the application to the local

1 unit of government, which shall modify, deny, or approve the
2 application under this subsection. The local unit of government
3 shall notify the department of its decision. The department
4 shall proceed as provided in this part.

5 (7) If a local unit of government does not have an ordinance
6 regulating wetlands, the department shall promptly send a copy of
7 the permit application to the local unit of government where the
8 wetland is located. The local unit of government may review the
9 application; may hold a hearing on the application; and may
10 recommend approval, modification, or denial of the application to
11 the department. The recommendations of the local unit of
12 government shall be made and returned to the department within 45
13 days after the local unit of government's receipt of the permit
14 application. The department shall approve, modify, or deny the
15 application as provided in this part.

16 (8) In addition to the requirements of subsection (7), the
17 department shall notify the local unit of government that the
18 department has issued a permit under this part within the
19 jurisdiction of that local unit of government within 15 days of
20 issuance of the permit. The department shall enclose a copy of
21 the permit with the notice.