

Act No. 118
Public Acts of 2015
Approved by the Governor
July 9, 2015
Filed with the Secretary of State
July 10, 2015
EFFECTIVE DATE: October 1, 2015

**STATE OF MICHIGAN
98TH LEGISLATURE
REGULAR SESSION OF 2015**

Introduced by Rep. Lauwers

ENROLLED HOUSE BILL No. 4391

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 8307a, 8308, 8310, 8310a, 8312, 8313, 8317, 8504, 8505, 8506, 8514, 8702, 8703, 8704, 8707, 8708, 8710, 8713a, 8715, 8716, and 8807 (MCL 324.8307a, 324.8308, 324.8310, 324.8310a, 324.8312, 324.8313, 324.8317, 324.8504, 324.8505, 324.8506, 324.8514, 324.8702, 324.8703, 324.8704, 324.8707, 324.8708, 324.8710, 324.8713a, 324.8715, 324.8716, and 324.8807), section 8307a as added and sections 8312 and 8313 as amended by 2002 PA 418, section 8310 as amended and section 8310a as added by 2008 PA 18, section 8317 as amended by 2012 PA 316, sections 8504 and 8505 as amended by 2014 PA 178, sections 8506 and 8514 as amended by 2006 PA 503, sections 8702, 8704, 8710, 8715, and 8716 as amended and section 8713a as added by 2011 PA 2, sections 8703, 8707, and 8708 as amended by 2013 PA 46, and section 8807 as amended by 2011 PA 1, and by adding sections 8506a and 8512h; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

Sec. 8307a. (1) Every pesticide distributed, sold, exposed, or offered for sale in this state shall be registered with the director pursuant to this part. The registration shall be submitted on a form provided by the director and shall be renewed annually before July 1. The director shall not register a pesticide under this part unless the registrant has paid all water quality protection fees and late fees required under part 87, registration fees under this part, and any administrative fines imposed under this part.

(2) A pesticide is considered distributed, sold, exposed, or offered for sale in this state when the offer to sell either originates within this state or is directed by the offeror to persons in this state and received by those persons.

(3) If a registrant distributes identical pesticides under more than 1 brand name, or distributes more than 1 pesticide formulation, each brand or formulation shall be registered as a separate product.

(4) A registrant shall not register a pesticide that contains a substance that is required to be registered with the department unless that substance is also registered with the department.

(5) A pesticide registration applicant shall submit to the director a complete copy of the pesticide labeling and the following, in a format prescribed by the director:

(a) The name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the applicant.

(b) The full product name of the pesticide and the EPA registration number.

(c) Other information considered necessary by the director.

(6) The applicant shall submit a complete formula of the pesticide proposed for registration, including the active and inert ingredients, when requested by the director and necessary for the director to execute his or her duties under this part. The director shall not use any information relative to formulas of products, trade secrets, or other information obtained under this part for his or her own advantage or reveal such information, other than to his or her authorized representative, the EPA, the department of environmental quality, the department of health and human services, a court of the state in response to a subpoena, a licensed physician, or in an emergency to a pharmacist or other persons qualified to administer antidotes.

(7) A registrant that operates from a business location outside this state shall do either of the following:

(a) Continuously maintain in this state a registered office and a resident agent, which agent may be an individual resident in this state whose business office or residence is identical with the registered office, a domestic corporation or limited liability company, or a foreign corporation or limited liability company authorized to transact business in this state and having a business office identical with the registered office. The registrant shall file with the department the name, address, and telephone number of the resident agent and shall maintain and make available records required by this part and part 87.

(b) Maintain and make available to the department records required by this part and part 87 and pay all costs incurred by the department in auditing the records if they are held at an out-of-state location.

Sec. 8308. (1) The director may do all of the following:

(a) Issue an experimental permit to a person applying for that permit if the director determines that the permit is necessary for the applicant to accumulate information necessary to register a pesticide.

(b) Prescribe terms, conditions, and the period of time the pesticide may be used under the experimental permit, which shall be under the supervision of the director.

(c) Revoke an experimental permit when its terms or conditions are violated or its terms and conditions are inadequate to avoid unreasonable adverse effects on the environment.

(2) The director may conduct audits to determine compliance with this part. In conducting audits under this part, the director may contract for the performance of the audit.

Sec. 8310. (1) A person shall not engage in distributing, selling, or offering for sale restricted use pesticides to the ultimate user except as authorized under an annual license for each place of business issued by the department pursuant to part 13.

(2) The applicant for a license under subsection (1) shall be the person in charge of each business location. The applicant shall demonstrate by written examination his or her knowledge of laws and rules governing the use and sale of restricted use pesticides.

(3) A person licensed under subsection (1) that operates from a business location outside this state shall do either of the following:

(a) Continuously maintain in this state a registered office and a resident agent, which agent may be an individual resident in this state whose business office or residence is identical with the registered office, a domestic corporation or limited liability company, or a foreign corporation or limited liability company authorized to transact business in this state and having a business office identical with the registered office. The person licensed under subsection (1) shall file with the department the name, address, and telephone number of the resident agent and shall maintain and make available records required by this part and part 87.

(b) Maintain and make available to the department records required by this part and part 87 and pay all costs incurred by the department in auditing the records if they are held at an out-of-state location.

(4) A restricted use pesticide dealer shall forward to the director a record of all sales of restricted use pesticides on forms provided by the director as required by rule. A restricted use pesticide dealer shall keep copies of the records on file for 2 years. These records are subject to inspection by an authorized agent of the director. The records shall, upon request, be supplied in summary form to other state agencies. The summary shall include the name and address of the restricted use pesticide dealer, the name and address of the purchaser, the name of the pesticide sold, and, in an emergency, the quantity sold. Information may not be made available to the public if, in the discretion of the director, release of that information could have a significant adverse effect on the competitive position of the dealer, distributor, or manufacturer.

(5) A restricted use pesticide dealer shall sell or distribute restricted use pesticides for use only by applicators certified under this part.

(6) The director may deny, suspend, or revoke a restricted use pesticide dealer's license for any violation of this part or an order issued under this part, or upon conviction under this part, FIFRA, or a state pesticide law of a reciprocating state committed by the dealer or the dealer's officer, agent, or employee. The director shall inform an applicant who is denied a restricted use pesticide dealer's license of the reasons why the license was denied.

(7) A restricted use pesticide dealer shall maintain and submit to the department records of all restricted use pesticide sales to private applicators and the intended county of application for those pesticides.

(8) Information collected in subsection (7) is confidential business information and is not subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(9) A restricted use pesticide dealer that distributes an agricultural pesticide into this state shall report to the agricultural pesticide registrant all of the following information concerning that distribution:

- (a) The product name.
- (b) The EPA registration number.
- (c) The amount of pesticide sold or distributed.
- (d) The wholesale value of pesticide sold or distributed.
- (e) The date of sale or distribution.
- (f) The sales or distribution invoice number.
- (g) The name and address of the consignee.

Sec. 8310a. (1) A person that is not licensed under section 8310 shall not engage in distributing, selling, or offering for sale agricultural pesticides except as authorized under an annual license for each place of business issued by the department pursuant to part 13.

(2) The applicant for a license under subsection (1) shall be the individual in charge of each business location.

(3) The application for a license under subsection (1) shall be on a form provided by the director and shall contain information regarding the applicant's proposed operations and other information considered pertinent by the director.

(4) A person licensed under subsection (1) who operates from a business location outside this state shall do either of the following:

(a) Continuously maintain in this state a registered office and a resident agent, which agent may be an individual resident in this state whose business office or residence is identical with the registered office, a domestic corporation or limited liability company, or a foreign corporation or limited liability company authorized to transact business in this state and having a business office identical with the registered office. The person licensed under subsection (1) shall file with the department the name, address, and telephone number of the resident agent and shall maintain and make available records required by this part and part 87.

(b) Maintain and make available to the department records required by this part and part 87 and pay all costs incurred by the department in auditing the records if they are held at an out-of-state location.

(5) An agricultural pesticide dealer who distributes an agricultural pesticide into this state shall report to the agricultural pesticide registrant all of the following information concerning that distribution:

- (a) The product name.
- (b) The EPA registration number.
- (c) The amount of pesticide sold or distributed.
- (d) The wholesale value of pesticide sold or distributed.
- (e) The date of sale or distribution.
- (f) The sales or distribution invoice number.
- (g) The name and address of the consignee.

(6) The director may deny, suspend, or revoke an agricultural pesticide dealer's license for any violation of this part or an order issued under this part, or upon conviction under this part, FIFRA, or a state pesticide law of a reciprocating state committed by the dealer or the dealer's officer, agent, or employee. The director shall inform an applicant who is denied an agricultural pesticide dealer's license of the reasons why the license was denied.

(7) A pesticide registrant who distributes agricultural pesticides into this state is exempt from subsection (1).

Sec. 8312. (1) To become a certified applicator, an applicant must satisfactorily complete the certification requirements prescribed by the director and categorized according to the various types of pesticide applications prescribed by rule and consistent with the regulations of the EPA.

(2) The application for a certified applicator certificate shall contain information considered to be pertinent by the director.

(3) A certified applicator applicant shall pay the appropriate fee as provided in section 8317.

(4) The director shall issue a certificate to applicants that successfully comply with all certification requirements under this part.

(5) The director may restrict an applicant to use only a certain type of equipment or pesticide upon finding that the applicant is only qualified to use that type of equipment or pesticide.

(6) The director may refuse to issue or renew a certificate if an applicant demonstrates an insufficient knowledge of any item called for in the application or has unsatisfied judgments under this part or rules promulgated under this part against him or her or if the equipment to be used by the applicant is unsafe or inadequate to properly apply pesticides.

(7) The director may at any time deny, revoke, or suspend a private agricultural applicator certificate or a commercial applicator certificate for a violation of this part or upon conviction under section 14 of FIFRA, 7 USC 136l, or upon conviction under a state pesticide law of a reciprocating state in accordance with section 8320.

(8) The director shall inform an applicant who is denied an applicator certificate of the reasons why the certificate was denied.

(9) A person shall display his or her certificate upon the request of the director.

Sec. 8313. (1) Commercial applicators that hold themselves out to the public as being in the business of applying pesticides shall obtain a commercial applicator license for each place of business.

(2) A commercial applicator shall be certified under section 8312 and shall have at least 1 of the following to qualify for a license:

(a) Service for not less than 2 application seasons as an employee of a commercial applicator or comparable education and experience as determined by the director.

(b) A baccalaureate degree from a recognized college or university in a discipline that provides education regarding pests and the control of pests and 1 application season of service as an employee of a commercial applicator.

(3) The commercial applicator license application shall be on a form provided by the director and shall contain information regarding the applicant's qualifications and proposed operations, the type of equipment to be used by the applicant, and other information considered pertinent by the director.

(4) An application for a commercial applicator license shall be accompanied by the appropriate fee as provided in section 8317.

(5) An application for a commercial applicator license shall be accompanied by proof of sufficient financial responsibility as prescribed by rule.

(6) The director may restrict an applicant to use only a certain type of equipment or pesticide upon finding that the applicant is qualified to use only that type.

(7) The director may refuse to issue or renew a commercial applicator license if the applicant demonstrates insufficient knowledge of an item in the application, or has unsatisfied judgments under this part or a rule promulgated under this part against him or her, or if the equipment used by the applicant is unsafe or inadequate for pesticide applications.

(8) The director may at any time deny, revoke, or suspend a commercial applicator license for a violation of this part or a violation of an order issued under this part, or upon conviction under this part, FIFRA, or a state pesticide law of a reciprocating state in accordance with section 8320.

(9) The director shall inform an applicant that is denied a commercial applicator license of the reasons why the license was denied.

(10) A person subject to the licensing requirements in this section shall only apply pesticides that are registered with the United States EPA, or subject to either the United States EPA's or this state's laws and rules.

(11) A person subject to the licensing requirements in this section shall not represent that a pesticide application has characteristics, ingredients, uses, benefits, or qualities that it does not have.

(12) A person subject to the licensing requirements in this section shall not represent that a pesticide application is necessary to control a pest if the pest is not present or likely to occur.

(13) A commercial applicator that operates from a business location outside this state shall do either of the following:

(a) Continuously maintain in this state a registered office and a resident agent, which agent may be an individual resident in this state whose business office or residence is identical with the registered office, a domestic corporation or limited liability company, or a foreign corporation or limited liability company authorized to transact business in this state and having a business office identical with the registered office. The commercial applicator shall file with the department the name, address, and telephone number of the resident agent and shall maintain and make available records required by this part and part 87.

(b) Maintain and make available to the department records required by this part and part 87 and pay all costs incurred by the department in auditing the records if they are held at an out-of-state location.

Sec. 8317. (1) An application submitted under this part shall be accompanied by the following application fee:

(a) For a commercial applicator certification, \$75.00.

(b) For a private agricultural applicator certification, \$50.00.

(c) For a commercial registered applicator, \$45.00.

(d) For a private registered applicator, \$50.00.

(2) Certificates for commercial applicators, private agricultural applicators, and registered applicators are valid for a period of not less than 3 years to be established by rule by the director.

(3) The license application fee for a commercial applicator license is \$100.00. The license expires annually on December 31.

(4) The registration application fee for the registration of pesticides sold, offered for sale, exposed for sale, or distributed is \$100.00 per product. However, if the pesticide registration fee is received by the department after June 30, the registrant shall pay an additional late fee of \$100.00 for each pesticide.

(5) The license application fee for a restricted use pesticide dealer's license is \$100.00. The license expires annually on December 31.

(6) The license application fee for an agricultural pesticide dealer's license is \$100.00. The license expires annually on December 31.

(7) Application fees submitted under this section are not refundable.

(8) Notwithstanding any other provision of subsection (1)(b) and (d), the department shall waive any fee otherwise required under subsection (1)(b) and (d) if the individual responsible for paying the fee is, and provides proof satisfactory to the department that he or she is, an honorably discharged veteran of the armed forces of the United States.

(9) The department shall deposit application, license, registration, and administrative fees and administrative, civil, and noncriminal fines received, as well as any payment for costs or reimbursement to the department for investigation, under this part in the agriculture licensing and inspection fees fund created in section 9 of the insect pest and plant disease act, 1931 PA 189, MCL 286.209, to be used, pursuant to appropriation, by the director in administering and carrying out those duties required by law under this part.

Sec. 8504. (1) A person shall not manufacture or distribute fertilizer in this state, except specialty fertilizer and soil conditioners, until the appropriate water quality protection fee provided in section 8715 has been submitted, and except as authorized by a license to manufacture or distribute issued by the department pursuant to part 13. An application for a license shall be accompanied by a fee of \$100.00 for each of the following:

(a) Each fixed location at which fertilizer is manufactured in this state.

(b) Each mobile unit used to manufacture fertilizer in this state.

(c) Each location out of this state that applies labeling showing an out-of-state origin of fertilizer distributed in this state to nonlicensees.

(2) An application for a license to manufacture or distribute fertilizer shall include all of the following:

(a) The name and address of the applicant.

(b) The name and address of each bulk distribution point in this state not licensed for fertilizer manufacture or distribution. The name and address shown on the license shall be shown on all labels, pertinent invoices, and bulk storage for fertilizers distributed by the licensee in this state.

(3) If the fertilizer is a beneficial use by-product intended for beneficial use 3 under part 115, the application shall also include the information identified in section 11551(7).

(4) The licensee shall inform the director in writing of additional distribution points established during the period of the license.

(5) A distributor is not required to obtain a license if the distributor is selling fertilizer of a distributor or a manufacturer licensed under this part.

(6) All licenses to manufacture or distribute fertilizer expire on December 31 of each year.

(7) A person licensed under this section that operates from a business location outside this state shall do either of the following:

(a) Continuously maintain in this state a registered office and a resident agent, which agent may be an individual resident in this state whose business office or residence is identical with the registered office, a domestic corporation or limited liability company, or a foreign corporation or limited liability company authorized to transact business in this state and having a business office identical with the registered office. The person licensed under this section shall file with the department the name, address, and telephone number of the resident agent and shall maintain and make available records required by this part and part 87.

(b) Maintain and make available to the department records required by this part and part 87 and pay all costs incurred in auditing the records if they are held at an out-of-state location.

Sec. 8505. (1) A person shall not distribute a specialty fertilizer or soil conditioner unless it is registered with the department. An application for registration listing each brand and product name of each grade of specialty fertilizer or soil conditioner shall be made on a form furnished by the director. An application shall be accompanied with the fees described in subsection (4) for each brand and product name of each grade. Labels for each brand and product name of each grade shall accompany the application.

(2) If the specialty fertilizer or soil conditioner is a beneficial use by-product intended for beneficial use 3 under part 115, the application shall also include the information identified in section 11551(7).

(3) Upon approval of an application by the director, a copy of the registration approval shall be furnished to the applicant. All registrations expire on December 31 of each year.

(4) A person applying for a registration under subsection (1) shall pay the following annual fees for each brand and product name of each grade:

(a) Registration fee of \$25.00.

(b) Appropriate water quality protection fee provided for in section 8715.

(5) A distributor is not required to register a brand of fertilizer that is registered under this part by another person, if the label does not differ in any respect.

(6) A manufacturer or distributor of custom blend specialty fertilizers for home lawns, golf courses, recreational areas, or other nonfarm areas is not required to register each grade distributed but shall license their firm on an application furnished by the director for an annual fee of \$100.00 and shall label the fertilizer as provided in section 8502. The label of each fertilizer distributed under this subsection shall be maintained by the manufacturer or distributor for 1 year for inspection by the director.

(7) A manufacturer or distributor of soil conditioners blended according to specifications provided to a blender or blended as specifically requested by the consumer prior to blending shall either register each brand or blend distributed or license its firm on an application furnished by the director for an annual fee of \$100.00 and shall label the soil conditioner as provided in section 8502. The label of each soil conditioner distributed under this subsection shall be maintained by the manufacturer or distributor for 1 year for inspection by the director.

(8) A registrant that operates from a business location outside this state shall do either of the following:

(a) Continuously maintain in this state a registered office and a resident agent, which agent may be an individual resident in this state whose business office or residence is identical with the registered office, a domestic corporation or limited liability company, or a foreign corporation or limited liability company authorized to transact business in this state and having a business office identical with the registered office. The registrant shall file with the department the name, address, and telephone number of the resident agent and shall maintain and make available records required by this part and part 87.

(b) Maintain and make available to the department records required by this part and part 87 and pay all costs incurred by the department in auditing the records if they are held at an out-of-state location.

Sec. 8506. (1) An inspection fee of 35 cents per ton shall be paid to the department for all fertilizers or soil conditioners sold or distributed in this state. For peat or peat moss, the inspection fee shall be 2 cents per cubic yard. This fee does not apply to registered specialty fertilizers or soil conditioners sold or distributed only in packages of 10 pounds or less.

(2) Payment of the inspection fee shall be made on the basis of tonnage reports setting forth the number of tons of each grade of fertilizer and soil conditioner and the number of cubic yards of peat or peat moss sold or distributed in this state. The reports shall cover the periods of the year and be made in a manner specified by the director in rules, and shall be filed with the department not later than 30 days after the close of each period. The time may be extended for cause for an additional 15 days only on written request to, and approval by, the department. Remittance to cover the inspection fee shall accompany each tonnage report. Payments due of less than \$5.00 are waived, and refunds of less than \$5.00 will not be processed, unless requested in writing. For any report not filed with the department by the due date, a penalty of \$50.00 or 10% of the amount due, whichever is greater, shall be assessed. Unpaid fees and penalties constitute a debt and become the basis of a judgment against the licensee. Records upon which the statement of tonnage is based, including those described in this section and section 8715, are subject to department audit.

(3) When more than 1 person is involved in the distribution of fertilizer or soil conditioners, the last person who is licensed or has the fertilizer or soil conditioner registered and who distributes to a nonlicensee or nonregistrant is responsible for reporting the tonnage and paying the inspection fee.

(4) Money collected by the department under this section shall be forwarded to the state treasurer for deposit into the fund.

Sec. 8506a. The director may conduct audits to determine compliance with this part. In conducting audits under this part, the director may contract for the performance of the audit.

Sec. 8512h. (1) The fertilizer advisory committee is created within the department. The committee shall be composed of the following members:

- (a) The director of the department of agriculture and rural development.
- (b) Two members representing the fertilizer industry.
- (c) One member representing the specialty fertilizer industry.
- (d) Four members representing farmers and other agricultural organizations.
- (e) One member from the United States Department of Agriculture Natural Resources Conservation Service.
- (f) One member who is a certified crop advisor.
- (g) One member representing conservation districts.
- (h) The director of Michigan State University AgBioResearch.
- (i) One member representing the largest statewide land conservancy in this state.

(2) The members of the committee may designate an authorized representative or substitute to represent them on the committee. Of the members first appointed by the director, 4 shall serve for 1 year, 4 for 2 years, and 4 for 3 years. Thereafter, an appointment shall be for 3 years. The director shall remove any member who is absent, either personally or through a designated representative or substitute, for 4 or more consecutive meetings. Vacancies shall be filled for the balance of an unexpired term. The committee shall meet on the call of the director, who shall serve as chairperson. The director shall call a meeting of the committee upon request of 2 or more members. A majority of the members of the committee constitute a quorum.

(3) The committee shall advise the director on the research funded under section 8514(4)(c).

(4) All meetings of the committee shall be conducted pursuant to the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

(5) As used in this section, "committee" means the fertilizer advisory committee created in subsection (1).

Sec. 8514. (1) The fertilizer control fund is created within the state treasury.

(2) The state treasurer shall receive for deposit in the fund all fees, administrative or civil fines, and payments for the costs of investigations incurred by the department collected under this part. In addition, 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) The administration and enforcement of this part.

(b) The development of training programs to ensure the proper use and storage of fertilizer.

(c) For research necessary to ensure the adoption and implementation of practices that optimize nutrient use efficiency, ensure soil fertility, and address environmental concerns with regard to fertilizer use. Until December 31, 2019, not less than 40% of the inspection fees collected with section 8506(1) shall be used for purposes of this subdivision.

(5) The department shall not provide grants with money from the fund to local government agencies, institutions of higher education, or nonprofit organizations unless the department provides notice of the grant to the senate and house appropriations subcommittees and the senate and house fiscal agencies at least 10 days before the grant is issued.

Sec. 8702. (1) "Activity plan" means a plan for a specific location that identifies all environmental risks and includes a time frame for implementation of conservation practices to address the environmental risks.

(2) "Agronomic rate" means either of the following:

(a) For pesticides, the application of pesticide contaminated materials in such a manner as not to exceed legal labeled rates.

(b) For fertilizers, the application of fertilizer contaminated materials at rates not to exceed those recommended by the Michigan State University Extension, taking all available sources of nutrients into account.

(3) "Analyte" or "analytes" means the material or materials that an analysis is designed to detect either qualitatively or quantitatively.

(4) "Conservation plan" means that term as it is defined in part 82.

(5) "Conservation practices" means that term as it is defined in part 82.

(6) "Confirmation mechanism" means a scientific process for the verification of detection of analytes in groundwater utilizing at least 2 separate water samples collected at time intervals of greater than 14 days from the same groundwater sampling point and analyzed by peer reviewed and authenticated laboratory methodologies.

(7) “Contaminant” means any pesticide or fertilizer originated chemical, radionuclide, ion, synthetic organic compound, microorganism, or other waste that does not occur naturally or that naturally occurs at a lower concentration than detected.

(8) “Contamination” means the direct or indirect introduction into the environment of any contaminant caused in whole or in part by human activity.

(9) “Council” means the environmental assurance advisory council created in section 8708.

(10) “Demonstration project” means a project designed to illustrate the implementation and impact of alternate conservation practices.

(11) “Department” means the department of agriculture and rural development.

(12) “Director” means the director of the department or his or her designee.

Sec. 8703. (1) “Envelope monitoring” means monitoring of groundwater in areas adjacent to properties where groundwater is contaminated to determine the concentration and spatial distribution of the contaminant in the aquifer.

(2) “Farm” means that term as it is defined in section 2 of the Michigan right to farm act, 1981 PA 93, MCL 286.472.

(3) “Farmer” means a person who owns or operates a farm.

(4) “Fertilizer” means a fertilizer as defined in part 85.

(5) “Fund” means the freshwater protection fund created in section 8716.

(6) “General screening” means monitoring of groundwater for the purpose of determining the presence and concentration of analytes.

(7) “Groundwater” means underground water within the zone of saturation.

(8) “MAEAP” or “Michigan agriculture environmental assurance program” means the Michigan agriculture environmental assurance program provided for in section 8710.

(9) “MAEAP standards” means all of the following as adopted by the commission of agriculture and rural development for the purpose of implementing the Michigan agriculture environmental assurance program:

(a) Conservation practices.

(b) Site-specific nutrient management plan requirements.

(c) Emergency protocols.

(d) Completed environmental risk and benefit assessments.

(e) United States Department of Agriculture Natural Resources Conservation Service practice standards.

(f) Generally accepted agricultural and management practices developed under the right to farm act, 1981 PA 93, MCL 286.471 to 286.474.

(g) Other standards considered appropriate by the director.

(10) “MAEAP-verified farm” means a farm determined by the department as meeting applicable MAEAP standards through an on-site evaluation.

(11) “Maximum contaminant level” means that term as it is defined in title XIV of the public health service act, chapter 373, 88 Stat. 1660, and regulations promulgated under that act.

(12) “Method detection limit” means the minimum concentration of a substance that can be measured and reported with 99% confidence that the analyte concentration is greater than 0 and is determined from analysis of a sample in a given matrix that contains the analyte.

(13) “Monitoring” means sampling and analysis to determine the levels of pesticides or their breakdown products; fertilizers or their residues; or other analytes as determined by the director.

Sec. 8704. (1) “On-site evaluation” means a specific set of criteria used to voluntarily evaluate a farmer’s property with regard to determination of potential environmental risks.

(2) “Pesticide” means that term as it is defined in part 83.

Sec. 8707. (1) The director, in conjunction with Michigan State University Extension and Michigan State University AgBioResearch, and in cooperation with the United States Department of Agriculture Natural Resources Conservation Service, the department of environmental quality, and other professional and industry organizations, shall develop conservation practices for approval by the commission of agriculture and rural development and upon approval shall promote their implementation.

(2) The director, in conjunction with Michigan State University, the department of environmental quality, and other persons the director considers appropriate, shall develop protocols for voluntary on-site evaluations. The on-site evaluations shall be designed to do all of the following:

(a) Provide farmers with the ability to voluntarily determine the relative risk of current practices in relation to sources of contamination.

(b) Provide farmers with the ability to determine the degree to which farm operations are in accord with MAEAP standards and applicable law.

(c) Prioritize operational changes on farms to protect groundwater and surface waters from sources of contamination.

(d) Guide farmers to appropriate technical and educational materials.

(e) Provide farmers with the opportunity for verification.

(f) Provide landowners with the ability to voluntarily assess the value of managing areas of the land that are not utilized for traditional or production agriculture practices for environmental, ecological, and economic benefits.

(3) The director, in conjunction with the council, shall review and evaluate the effectiveness of conservation practices approved under subsection (1).

Sec. 8708. (1) The director shall establish an environmental assurance advisory council composed of all of the following:

(a) The director of the department of agriculture and rural development.

(b) The director of the department of environmental quality.

(c) The director of the Michigan State University Extension.

(d) The director of the Michigan State University AgBioResearch.

(e) Representatives of all of the following as appointed by the director to serve terms of 3 years:

(i) The United States Department of Agriculture - Farm Service Agency.

(ii) The United States Department of Agriculture Natural Resources Conservation Service.

(iii) Conservation districts.

(iv) Farmers and other agricultural organizations.

(v) Nongovernmental conservation and environmental organizations.

(vi) Regulated agricultural industries.

(vii) A private consulting forester.

(viii) A member of the forest products industry.

(ix) A member of the logging profession.

(x) Other persons as determined by the director.

(xi) A member representing each regional environmental assurance team established under section 8709.

(2) The council shall be co-chaired by the representative from Michigan State University Extension and a representative from 1 of the farmers and other agricultural organizations.

(3) The council shall advise the director on topics including, but not limited to, the following:

(a) MAEAP standards.

(b) On-site evaluations for verification of specific aspects of a farming operation.

(c) Water quality and environmental monitoring.

(d) Protocols for verification and revocation of verification.

(e) MAEAP activities.

(f) Interagency coordination of conservation programs.

(g) The use of money in the clean water fund created in section 8807 and other funding sources to promote MAEAP and activities to encourage more MAEAP-verified farms.

(h) Options to increase assistance to assist small- and medium-sized farms in achieving MAEAP standards.

(i) The creation of subcommittees as needed to address emerging and ongoing issues.

(j) On-site evaluations of potential environmental, ecological, and economic benefits that can be realized by managing areas of the land that are not utilized for traditional or production agriculture practices.

(4) The council shall do all of the following:

(a) Annually provide recommendations to the director on MAEAP standards and protocols for verification and revocation of verification for consideration by the commission of agriculture and rural development.

(b) Annually submit a report to the department that outlines activities, accomplishments, and emerging issues. The department shall share this report with the agriculture community.

(c) Provide recommendations to the director on the creation of a tiered recognition program for farms working toward MAEAP verification. To qualify for the recognition program, farmers must have completed educational programs, conducted appropriate farm assessments, and implemented conservation practices as approved by the director. The tiers may be used to recognize a farm's movement toward MAEAP verification.

(d) Provide recommendations to the director and the legislature on incentives to increase participation in MAEAP.

(e) Annually provide recommendations to the director on funding for research projects that address impediments to verification and improve MAEAP practice standards.

Sec. 8710. (1) The director, in consultation with the council, shall implement a Michigan agriculture environmental assurance program designed to promote natural resources conservation through education, technical assistance, and verification. The MAEAP shall be a voluntary program that is available to farms throughout the state.

(2) A farmer who desires to have his or her farm MAEAP-verified shall do all of the following:

(a) Complete educational requirements authorized by the department.

(b) Develop and implement 1 or more conservation plans as approved by the director.

(c) Upon completion of subdivisions (a) and (b), contact the department to arrange for an on-site evaluation.

(3) If the department conducts an on-site evaluation and determines that a farm is meeting MAEAP standards, the department shall issue a MAEAP verification. A MAEAP verification that is in effect on September 30, 2015 is valid for 5 years from the original issue date. Beginning October 1, 2015, a new MAEAP verification or reverification is valid for 5 years.

(4) A farm is eligible for reverification if the department determines it is meeting MAEAP standards through an on-site evaluation conducted by the department or its designee.

(5) The department shall provide MAEAP verification signs to each MAEAP-verified farm.

(6) A farm that allows its verification to lapse or whose verification is revoked under subsection (7) shall forfeit its verification sign and all other benefits that are provided to MAEAP-verified farms under this act.

(7) The director may revoke verification of a MAEAP-verified farm if any of the following apply:

(a) The department, in consultation with the department of environmental quality, determines with scientific evidence provided by water quality data that the MAEAP-verified farm caused an exceedance of water quality standards as a result of nonconformance with MAEAP standards.

(b) The MAEAP-verified farm fails to conform to MAEAP standards as a result of gross negligence.

(c) The MAEAP-verified farm fails to comply with protocols for verification as approved by the commission of agriculture and rural development.

(d) Upon advice from the interagency technical review panel provided for in subsection (11), the director determines that the MAEAP-verified farm is responsible for a pattern of repeated violations of environmental laws, rules, regulations, permit conditions, settlement agreements, orders of consent, or judicial orders that were due to separate and distinct events.

(8) A farmer is not liable for groundwater contamination on a MAEAP-verified farm for activities on the MAEAP-verified farm unless he or she was grossly negligent or in violation of state or federal law or failed to comply with the MAEAP standards. This part does not modify or limit any obligation, responsibility, or liability imposed by any other provision of state law.

(9) The department shall establish a MAEAP grants program. Grants issued under the MAEAP grants program are limited to availability of funds collected pursuant to this part. Grants shall be available for all of the following:

(a) Technical assistance.

(b) Promotion of the MAEAP.

(c) Educational programs related to the MAEAP.

(d) Demonstration projects to implement conservation practices.

(e) Removal of potential sources of contamination.

(f) Other purposes considered appropriate by the director.

(10) Following review of the proposed tiered recognition program submitted to the director by the council under section 8708, the director shall approve and implement a tiered recognition program. As part of the tiered recognition program, the department shall provide a certificate of progress to a farm participating in MAEAP recognizing each time a new tier is achieved. The certificate of progress shall summarize conservation practices implemented by the farm and the environmental impacts of the implemented conservation practices. The certificate of progress shall recognize the farm for its achievement and encourage the farm to complete the remaining conservation practices necessary for

verification. A certificate of progress is valid for 5 years from the date of mailing. Upon written confirmation by the farmer and the MAEAP technician updating any new conservation practices and confirming that all previous applicable conservation practices are still being implemented, the department shall reissue a certificate of progress for additional 5-year periods, as appropriate, until the farm becomes MAEAP-verified in the applicable system or the farmer ceases implementation of the conservation practices. Information collected under this section is not subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(11) The department and the department of environmental quality shall enter into a memorandum of understanding to formalize a commitment to promote the MAEAP and to clarify the application of state and federal environmental laws to farms. In addition, the memorandum of understanding shall provide for all of the following:

(a) An ongoing interagency technical review panel for MAEAP-verified farms that discharge in violation of state or federal law to determine enforcement action.

(b) Preference for funding for nonpoint source pollution - funds for farms seeking MAEAP verification.

(c) Considerations for reverification of a farm with revoked MAEAP verification status.

(d) Integration of the MAEAP into pollution prevention activities of both agencies.

(e) Clarification of the consultation process in part 88 to ensure that the department of agriculture and rural development has meaningful input into the establishment of the grants program and the issuance of grants.

(12) Beginning December 1, 2016 and every December 1 thereafter, the department shall publish a report on MAEAP that includes, but is not limited to, all of the following:

(a) County and statewide totals for the previous fiscal year of all of the following:

(i) Conservation practices implemented.

(ii) Environmental impacts of practices implemented.

(iii) Number of new verifications and reverifications.

(iv) Number of unique farms verified.

(v) Number of farms in tiered recognition system.

(vi) Total area and percentage of this state's farmland involved.

(b) County and statewide program to-date totals of all of the following:

(i) Conservation practices implemented.

(ii) Environmental impacts of practices implemented.

(iii) Number of new verifications and reverifications.

(iv) Number of unique farms verified.

(v) Number of farms in tiered recognition system.

(vi) Total area and percentage of this state's farmland involved.

(c) A summary of educational and MAEAP verification standards changes for each system tool and an overview of the reasons for the changes.

(d) A summary of each system subcommittee's work beyond the standards changes, including identification of ongoing and emerging issues.

(13) The department shall make available a consent form for completion by farmers implementing conservation practices that includes both of the following:

(a) Permission for the department to associate the farmer's name, farm location, and mailing address with conservation practices implemented on that farm.

(b) A statement by the farmer that conservation practices being implemented on the farm are for the purpose of working toward MAEAP verification.

(14) The department shall provide for the consent forms described in subsection (13) to be authenticated. The department may use a completed consent form in the recognition program described in subsection (10). Information collected under this subsection is not subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

Sec. 8713a. (1) The director, in consultation with the council, may develop and establish priorities, procedures, and protocols for the implementation of a surface water quality monitoring program to do both of the following:

(a) Promote voluntary water quality monitoring by farms.

(b) Monitor and benchmark the effectiveness of conservation practices and MAEAP standards in cooperation with participating farmers.

(2) Water quality information collected under this section by the department in cooperation with farmers shall be aggregated and made available to the commission of agriculture and rural development. Specific locations or persons

involved in water quality information collection are exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

Sec. 8715. (1) In addition to the fees provided for in part 83, a registrant shall pay an annual water quality protection fee for each product to be registered. The water quality protection fee is \$270.00 per product. The water quality protection fee is due in the office of the director before July 1.

(2) An additional late fee of \$100.00 shall be paid by the registrant for each pesticide if the pesticide registration is a renewal registration and the water quality protection fee is received by the department after June 30.

(3) A person required to pay a specialty fertilizer or soil conditioner registration fee under section 8505 shall pay an additional \$100.00 water quality protection fee for each brand and product name of each grade registered.

(4) All fertilizer manufacturers or distributors licensed under part 85, except specialty fertilizer and soil conditioner registrants, shall pay the following:

(a) Until December 31, 2015, a water quality protection fee of 1-1/2 cents per percent of nitrogen in the fertilizer for each ton of fertilizer sold.

(b) Beginning January 1, 2016, \$.0005 per pound of fertilizer sold.

(5) The fees collected under this part, including any interest or dividends earned, shall be transmitted to the state treasurer, who shall credit the money received to the fund.

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

(7) The department may audit, or may contract for audits of records that are the basis for fees levied under this section.

(8) This section is repealed December 31, 2021.

Sec. 8716. (1) The freshwater protection 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, including general fund general purpose appropriations, gifts, grants, and bequests. The director shall annually seek matching general fund general purpose appropriations in amounts equal to the water quality protection fees collected under section 8715 that are deposited into the fund pursuant to this part. 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 be the administrator of the fund for auditing purposes.

(5) The department shall expend money from the fund, upon appropriation, only for 1 or more of the following purposes:

(a) Direct assistance.

(b) Indirect assistance.

(c) Emergency response and removal of potential sources of water contamination. Expenditures pursuant to this subdivision shall not exceed \$15,000.00 per location.

(d) Natural resources protection.

(e) Administrative costs. Expenditures pursuant to this subdivision shall not exceed 20% of the annual appropriations from the fund.

(6) The department shall establish criteria and procedures for approving proposed expenditures from the fund.

(7) Notwithstanding section 8715, if at the close of any fiscal year the amount of money in the fund exceeds \$5,000,000.00, the department shall not collect water quality protection fees for the following year. After the water quality protection fees have been suspended under this subsection, the fees shall only be reinstated if, at the close of any succeeding fiscal year, the amount of money in the fund is less than \$2,000,000.00.

(8) The department of treasury shall, before November 1 of each year, notify the department of the balance in the fund at the close of the preceding fiscal year.

(9) As used in this section:

(a) "Administrative costs" includes, but is not limited to, costs incurred during any of the following:

(i) Groundwater monitoring for pesticides and fertilizers.

(ii) Development and enforcement of natural resources protection rules.

(iii) Coordination of programs under this part with the United States Environmental Protection Agency and other state programs with environmental protection responsibilities.

(iv) Coordination of programs under this part with the United States Department of Agriculture Natural Resources Conservation Service and state programs with nonpoint source pollution prevention and conservation practice responsibilities.

(v) Management of pesticide sales information.

(b) "Direct assistance" includes, but is not limited to, programs that will provide for any of the following:

(i) Provision of alternate noncommunity water supplies.

(ii) Closure of wells that may impact groundwater, such as abandoned, improperly constructed, or drainage wells.

(iii) The environmentally sound disposal or recycling of specialty pesticide containers.

(iv) The environmentally sound disposal or recycling of nonspecialty pesticide containers.

(v) Specialty and nonspecialty pesticide disposal programs.

(vi) Programs devoted to integrated natural resources conservation that encourage the judicious use of pesticides and fertilizers and other agricultural inputs and practices that are protective of water quality through targeted systems approach to management decisions.

(vii) Incentive and cost share programs to assist farmers in achieving MAEAP standards.

(viii) Incentive and cost share programs for MAEAP-verified farms with potential sources of contamination on their property.

(ix) Monitoring of private well water for pesticides, fertilizers, and other contaminants.

(x) Removal of soils and waters contaminated by pesticides and fertilizers and the land application of those materials at agronomic rates.

(xi) MAEAP grants pursuant to section 8710.

(xii) Programs that enhance investment of private and federal funds in conservation.

(xiii) Verification.

(xiv) Other programs established pursuant to this part.

(c) "Indirect assistance" includes, but is not limited to, programs that will provide for any of the following:

(i) Public education and demonstration programs on specialty pesticide container recycling and environmentally sound disposal methods.

(ii) Educational programs.

(iii) Technical assistance programs.

(iv) The promotion and implementation of on-site evaluation systems, conservation practices, and the MAEAP.

(v) Research programs.

Sec. 8807. (1) The clean 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) Except as otherwise provided in this section, the department, in consultation with the department of agriculture and rural development, shall expend money in the fund, upon appropriation, for any of the following:

(a) To implement the programs described in the department's document entitled "A Strategic Environmental Quality Monitoring Program for Michigan's Surface Waters", dated January 1997. In implementing these programs, the department may contract with any person.

(b) Not more than \$100,000.00 of the total annual appropriations from the fund to monitor and benchmark the effectiveness of conservation practices and MAEAP standards in cooperation with participating farmers.

(c) Promotion of MAEAP and activities to encourage more MAEAP-verified farms.

(d) Water pollution control activities.

(e) Wellhead protection activities.

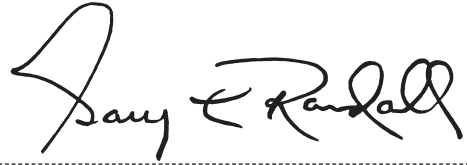
(f) Storm water treatment projects and activities.

(5) Money in the fund shall not be expended for combined sewer overflow corrections.

(6) Money in the fund shall not be expended until rules are promulgated under section 8808.

Enacting section 1. This amendatory act takes effect October 1, 2015.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor