

Act No. 14
Public Acts of 2003
Approved by the Governor
June 4, 2003
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June 5, 2003
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STATE OF MICHIGAN
92nd LEGISLATURE
REGULAR SESSION OF 2003

Introduced by Reps. Palmer, Sheltroun, Meyer, Elkins, Brandenburg, Acciavatti, Hummel, Stewart, Rick Johnson, Richardville, Bisbee, Hager, Vander Veen, Pastor, DeRoche, Amos, Hune, Gleason, Ward, Emmons, Steil, Nitz, Farhat, Gillard and Casperson

ENROLLED HOUSE BILL No. 4257

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 30301, 30305, 30306, 30312, 32501, 32512, and 32513 (MCL 324.30301, 324.30305, 324.30306, 324.30312, 324.32501, 324.32512, and 324.32513), sections 30301, 30312, 32501, and 32512 as added by 1995 PA 59, section 30305 as amended by 1996 PA 550, section 30306 as amended by 1998 PA 228, and section 32513 as amended by 1999 PA 106, and by adding sections 32512a and 32516.

The People of the State of Michigan enact:

Sec. 30301. As used in this part:

- (a) "Beach" means the area landward of the shoreline of the Great Lakes as the term shoreline is defined in section 32301.
- (b) "Beach maintenance activities" means any of the following in the area of Great Lakes bottomlands lying below the ordinary high-water mark and above the water's edge:
 - (i) Manual or mechanized leveling of sand.
 - (ii) Mowing of vegetation.
 - (iii) Manual de minimis removal of vegetation.
 - (iv) Grooming of soil.
 - (v) Construction and maintenance of a path.
- (c) "Debris" means animal or fish carcasses, zebra mussel shells, dead vegetation, trash, and discarded materials of human-made origin.
- (d) "Department" means the department of environmental quality.
- (e) "Director" means the director of the department.
- (f) "Fill material" means soil, rocks, sand, waste of any kind, or any other material that displaces soil or water or reduces water retention potential.
- (g) "Environmental area" means an environmental area as defined in section 32301.

(h) "Grooming of soil" means raking or dragging, pushing, or pulling metal teeth through the top 4 inches of soil without disturbance of or destruction to plant roots, for the purpose of removing debris.

(i) "Leveling of sand" means the relocation of sand within areas being leveled that are predominantly free of vegetation, including the redistribution, grading, and spreading of sand that has been deposited through wind or wave action onto upland riparian property.

(j) "Minor drainage" includes ditching and tiling for the removal of excess soil moisture incidental to the planting, cultivating, protecting, or harvesting of crops or improving the productivity of land in established use for agriculture, horticulture, silviculture, or lumbering.

(k) "Mowing of vegetation" means the cutting of vegetation to a height of not less than 2 inches, without disturbance of soil or plant roots.

(l) "Ordinary high-water mark" means that term as it is defined in section 32502.

(m) "Path" means a temporary access walkway from the upland riparian property directly to the shoreline across swales with standing water, not exceeding 6 feet in bottom width and consisting of sand and pebbles obtained from the exposed, nonvegetated bottomlands or from the upland riparian property.

(n) "Person" means an individual, sole proprietorship, partnership, corporation, association, municipality, this state, an instrumentality or agency of this state, the federal government, an instrumentality or agency of the federal government, or other legal entity.

(o) "Removal of vegetation" means the manual or mechanized removal of vegetation, other than the manual de minimis removal of vegetation.

(p) "Wetland" means land characterized by the presence of water at a frequency and duration sufficient to support, and that under normal circumstances does support, wetland vegetation or aquatic life, and is commonly referred to as a bog, swamp, or marsh and which is any of the following:

(i) Contiguous to the Great Lakes or Lake St. Clair, an inland lake or pond, or a river or stream.

(ii) Not contiguous to the Great Lakes, an inland lake or pond, or a river or stream; and more than 5 acres in size; except this subparagraph shall not be of effect, except for the purpose of inventorying, in counties of less than 100,000 population until the department certifies to the commission it has substantially completed its inventory of wetlands in that county.

(iii) Not contiguous to the Great Lakes, an inland lake or pond, or a river or stream; and 5 acres or less in size if the department determines that protection of the area is essential to the preservation of the natural resources of the state from pollution, impairment, or destruction and the department has so notified the owner; except this subparagraph may be utilized regardless of wetland size in a county in which subparagraph (ii) is of no effect; except for the purpose of inventorying, at the time.

Sec. 30305. (1) Activities that require a permit under part 325 or part 301 or a discharge that is authorized by a discharge permit under section 3112 or 3113 do not require a permit under this part.

(2) The following uses are allowed in a wetland without a permit subject to other laws of this state and the owner's regulation:

(a) Fishing, trapping, or hunting.

(b) Swimming or boating.

(c) Hiking.

(d) Grazing of animals.

(e) Farming, horticulture, silviculture, lumbering, and ranching activities, including plowing, irrigation, irrigation ditching, seeding, cultivating, minor drainage, harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices. Wetland altered under this subdivision shall not be used for a purpose other than a purpose described in this subsection without a permit from the department.

(f) Maintenance or operation of serviceable structures in existence on October 1, 1980 or constructed pursuant to this part or former 1979 PA 203.

(g) Construction or maintenance of farm or stock ponds.

(h) Maintenance, operation, or improvement which includes straightening, widening, or deepening of the following which is necessary for the production or harvesting of agricultural products:

(i) An existing private agricultural drain.

(ii) That portion of a drain legally established pursuant to the drain code of 1956, 1956 PA 40, MCL 280.1 to 280.630, which has been constructed or improved for drainage purposes.

(iii) A drain constructed pursuant to other provisions of this part or former 1979 PA 203.

(i) Construction or maintenance of farm roads, forest roads, or temporary roads for moving mining or forestry equipment, if the roads are constructed and maintained in a manner to assure that any adverse effect on the wetland will be otherwise minimized.

(j) Drainage necessary for the production and harvesting of agricultural products if the wetland is owned by a person who is engaged in commercial farming and the land is to be used for the production and harvesting of agricultural products. Except as otherwise provided in this part, wetland improved under this subdivision after October 1, 1980 shall not be used for nonfarming purposes without a permit from the department. This subdivision does not apply to a wetland that is contiguous to a lake or stream, or to a tributary of a lake or stream, or to a wetland that the department has determined by clear and convincing evidence to be a wetland that is necessary to be preserved for the public interest, in which case a permit is required.

(k) Maintenance or improvement of public streets, highways, or roads, within the right-of-way and in such a manner as to assure that any adverse effect on the wetland will be otherwise minimized. Maintenance or improvement does not include adding extra lanes, increasing the right-of-way, or deviating from the existing location of the street, highway, or road.

(l) Maintenance, repair, or operation of gas or oil pipelines and construction of gas or oil pipelines having a diameter of 6 inches or less, if the pipelines are constructed, maintained, or repaired in a manner to assure that any adverse effect on the wetland will be otherwise minimized.

(m) Maintenance, repair, or operation of electric transmission and distribution power lines and construction of distribution power lines, if the distribution power lines are constructed, maintained, or repaired in a manner to assure that any adverse effect on the wetland will be otherwise minimized.

(n) Operation or maintenance, including reconstruction of recently damaged parts, of serviceable dikes and levees in existence on October 1, 1980 or constructed pursuant to this part or former 1979 PA 203.

(o) Construction of iron and copper mining tailings basins and water storage areas.

(p) Until November 1, 2007, beach maintenance activities that meet all of the following conditions:

(i) The activities shall not occur in environmental areas and shall not violate part 365 or rules promulgated under that part, or the endangered species act of 1973, Public Law 93-205, 87 Stat. 884, or rules promulgated under that act.

(ii) The width of any mowing of vegetation shall not exceed the width of the riparian property or 100 feet, whichever is less.

(iii) All collected debris shall be disposed of properly outside of any wetland.

(q) Until 3 years after the effective date of the amendatory act that added this subdivision, removal of vegetation as authorized under section 32516.

(3) An activity in a wetland that was effectively drained for farming before October 1, 1980 and that on and after October 1, 1980 has continued to be effectively drained as part of an ongoing farming operation is not subject to regulation under this part.

(4) A wetland that is incidentally created as a result of 1 or more of the following activities is not subject to regulation under this part:

(a) Excavation for mineral or sand mining, if the area was not a wetland before excavation. This exemption does not include a wetland on or adjacent to a water body of 1 acre or more in size.

(b) Construction and operation of a water treatment pond or lagoon in compliance with the requirements of state or federal water pollution control regulations.

(c) A diked area associated with a landfill if the landfill complies with the terms of the landfill construction permit and if the diked area was not a wetland before diking.

Sec. 30306. (1) Except as provided in section 30307(6), to obtain a permit for a use or development listed in section 30304, a person shall file an application with the department on a form provided by the department. The application shall include all of the following:

(a) The person's name and address.

(b) The location of the wetland.

(c) A description of the wetland on which the use or development is to be made.

(d) A statement and appropriate drawings describing the proposed use or development.

(e) The wetland owner's name and address.

(f) An environmental assessment of the proposed use or development if requested by the department, which assessment shall include the effects upon wetland benefits and the effects upon the water quality, flow, and levels, and the wildlife, fish, and vegetation within a contiguous lake, river, or stream.

(2) For the purposes of subsection (1), a proposed use or development of a wetland shall be considered as a single permit application under this part if the scope, extent, and purpose of a use or development are made known at the time of the application for the permit.

(3) Except as provided in subsections (4) and (5), an application for a permit submitted under subsection (1) shall be accompanied by the following fee:

(a) For a project in a category of activities for which a general permit is issued under section 30312, a fee of \$100.00.

(b) For a permit for the removal of vegetation in an area that is not more than 100 feet wide or the width of the property, whichever is less, or the mowing of vegetation in excess of what is allowed in section 30305(2)(p)(ii), in the area between the ordinary high-water mark and the water's edge, a fee of \$50.00.

(c) For a major project, including any of the following, a fee of \$2,000.00:

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

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

(iii) A new golf course impacting wetland.

(iv) A subdivision impacting wetland.

(v) A condominium impacting wetland.

(d) For all other projects, a fee of \$500.00.

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

(a) Section 3104.

(b) Part 301.

(c) Part 323.

(d) Part 325.

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

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

(6) If the department determines that a permit is not required under this part, the department shall promptly refund the fee paid under this section.

Sec. 30312. (1) The department, after notice and opportunity for a public hearing, may issue general permits on a statewide basis or within a local unit of government for a category of activities if the department determines that the activities are similar in nature, will cause only minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effect on the environment. A general permit issued under this subsection shall be based on the requirements of this part and the rules promulgated under this part, and shall set forth the requirements and standards that shall apply to an activity authorized by the general permit.

(2) The department may impose conditions on a permit for a use or development if the conditions are designed to remove an impairment to the wetland benefits, to mitigate the impact of a discharge of fill material, or to otherwise improve the water quality.

(3) The department may establish a reasonable time when the construction, development, or use is to be completed or terminated. A general permit shall not be valid for more than 5 years.

(4) A general permit under this section may be issued for the mowing of vegetation or the removal of vegetation in the area between the ordinary high-water mark and the water's edge. An application under this subsection may be submitted by a local unit of government on behalf of property owners within its jurisdiction or by 1 or more adjacent property owners for riparian property located within the same county.

Sec. 32501. As used in this part:

(a) "Beach" means the area landward of the shoreline of the Great Lakes as the term shoreline is defined in section 32301.

(b) "Beach maintenance activities" means any of the following in the area of Great Lakes bottomlands lying below the ordinary high-water mark and above the water's edge:

(i) Manual or mechanized leveling of sand.

(ii) Mowing of vegetation.

(iii) Manual de minimis removal of vegetation.

(iv) Grooming of soil.

(v) Construction and maintenance of a path.

(c) “Debris” means animal or fish carcasses, zebra mussel shells, dead vegetation, trash, and discarded materials of human-made origin.

(d) “Department” means the department of environmental quality.

(e) “Director” means the director of the department.

(f) “Environmental area” means an environmental area as defined in section 32301.

(g) “Grooming of soil” means raking or dragging, pushing, or pulling metal teeth through the top 4 inches of soil without disturbance of or destruction to plant roots, for the purpose of removing debris.

(h) “Leveling of sand” means the relocation of sand within areas being leveled that are predominantly free of vegetation, including the redistribution, grading, and spreading of sand that has been deposited through wind or wave action onto upland riparian property.

(i) “Marina purposes” means an operation making use of submerged bottomlands or filled-in bottomlands of the Great Lakes for the purpose of service to boat owners or operators, which operation may restrict or prevent the free public use of the affected bottomlands or filled-in lands.

(j) “Mowing of vegetation” means the cutting of vegetation to a height of not less than 2 inches, without disturbance of soil or plant roots.

(k) “Path” means a temporary access walkway from the upland riparian property directly to the shoreline across swales with standing water, not exceeding 6 feet in bottom width and consisting of sand and pebbles obtained from the exposed, nonvegetated bottomlands or from the upland riparian property.

(l) “Removal of vegetation” means the manual or mechanized removal of vegetation other than the de minimis removal of vegetation.

(m) “Wetland” means that term as it is defined in section 30301.

Sec. 32512. (1) Unless a permit has been granted by the department or authorization has been granted by the legislature, or except as to boat wells and slips facilitating private, noncommercial, recreational boat use, not exceeding 50 feet in length where the spoil is not disposed of below the ordinary high-water mark of the body of water to which it is connected, a person shall not do any of the following:

(a) Construct, dredge, commence, or do any work with respect to an artificial canal, channel, ditch, lagoon, pond, lake, or similar waterway where the purpose is ultimate connection of the waterway with any of the Great Lakes, including Lake St. Clair.

(b) Connect any natural or artificially constructed waterway, canal, channel, ditch, lagoon, pond, lake, or similar waterway with any of the Great Lakes, including Lake St. Clair, for navigation or any other purpose.

(c) Dredge or place spoil or other material on bottomland.

(d) Construct a marina.

(2) Notwithstanding subsection (1), and with respect to lands covered and affected by this part, a permit or other approval is not required under this part for either of the following:

(a) Until November 1, 2007, beach maintenance activities that meet all of the following conditions:

(i) The activities shall not occur in environmental areas and shall not violate part 365 or rules promulgated under that part, or the endangered species act of 1973, Public Law 93-205, 87 Stat. 884, or rules promulgated under that act.

(ii) The width of any mowing of vegetation shall not exceed the width of the riparian property or 100 feet, whichever is less.

(iii) All collected debris shall be disposed of properly outside of any wetland.

(b) Until 3 years after the effective date of the amendatory act that added this subdivision, removal of vegetation as authorized in section 32516.

Sec. 32512a. (1) The department, after notice and opportunity for a public hearing, may issue general permits on a statewide basis or within a local unit of government for a category of activities if the department determines that the activities are similar in nature, will cause only minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effect on the environment. A general permit issued under this subsection shall be based on the requirements of this part and the rules promulgated under this part, and shall set forth the requirements and standards that shall apply to an activity authorized by the general permit.

(2) A general permit issued under this section shall not be valid for more than 5 years.

(3) A general permit under this section may be issued for the mowing of vegetation or the removal of vegetation in the area between the ordinary high-water mark and the water’s edge. An application under this subsection may be

submitted by a local unit of government on behalf of property owners within its jurisdiction or by 1 or more adjacent property owners for riparian property located within the same county.

Sec. 32513. (1) Before any work or connection specified in section 32512 or 32512a is undertaken, a person shall file an application with the department of environmental quality setting forth the following:

(a) The name and address of the applicant.

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

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

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

(e) Other information required by the department of environmental quality.

(2) Except as provided in subsections (3) and (4), an application for a permit under this section shall be accompanied by a fee according to the following schedule:

(a) Until October 1, 2004:

(i) For a project in a category of activities for which a general permit is issued under section 32512a, a fee of \$100.00.

(ii) For activities included in the minor project category as described in rules promulgated under this part and for a permit for the removal of vegetation in an area that is not more than 100 feet wide or the width of the property, whichever is less, or the mowing of vegetation in excess of what is allowed in section 32512(2)(a)(ii), in the area between the ordinary high-water mark and the water's edge, a fee of \$50.00.

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

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

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

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

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

(E) \$1,500.00 if an existing permitted marina proposes maintenance dredging of 10,000 cubic yards or more or the addition of seawalls, bulkheads, or revetments of 500 feet or more.

(iv) For major projects other than a project described in subparagraph (iii)(E), involving any of the following, a fee of \$2,000.00:

(A) Dredging of 10,000 cubic yards or more.

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

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

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

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

(F) New breakwater or channel jetty.

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

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

(v) For all other projects not listed in subparagraphs (i) through (iv), \$500.00.

(b) Beginning October 1, 2004, a fee of \$50.00 for any project listed in subdivision (a).

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

(a) Part 301.

(b) Part 303.

(c) Part 323.

(d) Section 3104.

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

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

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

Sec. 32516. (1) Within 10 working days after the effective date of the amendatory act that added this section, the director shall identify 2 areas of the shoreline of the Great Lakes and Lake St. Clair where the removal of vegetation between the ordinary high-water mark and the water's edge shall be allowed without a permit under this part or part 303. The designation shall be made in writing, is final, and is not subject to appeal. Within 1 year after this designation is made, the director may designate additional areas unless he or she determines that making additional designations would result in pollution, impairment, or destruction to the natural resources of the state. Within areas designated by the director under this subsection, the removal of vegetation is allowed if all of the following conditions are met:

(a) The landowner has received a letter of approval from the department under subsection (2) confirming at least 3 of the following:

(i) The area is unconsolidated material predominantly composed of sand, rock, or pebbles, or is predominantly vegetated by non-native or invasive species.

(ii) The area met the requirement of subparagraph (i) as of January 1, 1997.

(iii) The removal of vegetation does not violate part 365 or rules promulgated under that part, or the endangered species act of 1973, Public Law 93-205, 87 Stat. 884, or rules promulgated under that act.

(iv) The area in which removal of vegetation may occur is not an environmental area.

(b) The area in which removal of vegetation may occur does not exceed 50% of the width of the upland riparian property or 100 feet, whichever is greater, or a wider area if approved by the director.

(c) All collected vegetation shall be disposed of properly outside of any wetland.

(2) A person who owns riparian property on the shoreline of the Great Lakes or Lake St. Clair within an area designated under subsection (1) may submit to the director a request to conduct removal of vegetation. The request shall be submitted by certified mail or facsimile and shall include the address of the property, a parcel description by section, township, and range, the parcel tax number, the width in feet of the shoreline frontage, the width of the area proposed for removal of vegetation, and permission for the department to conduct an on-site inspection, if needed. Within 10 working days after receipt of a request under this subsection, the director shall notify the riparian property owner, in writing, whether the conditions in subsection (1)(a) are met.

(3) Upon receipt of a letter of approval under subsection (2), the riparian property owner may conduct the removal of vegetation as provided in subsection (1).

(4) By January 1, 2006, the director shall prepare and submit to the senate majority leader, the speaker of the house of representatives, the standing committees of the legislature with jurisdiction primarily related to natural resources and the environment, and the governor a report that evaluates the activities allowed under subsection (1), describes the impacts to the affected areas, and recommends statutory changes based upon the evaluation, if appropriate.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor